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ABSTRACT

Focusing on the theme of conflict resolution, this booklet contains 22 lessons developed and used by classroom teachers at all grade levels. The lessons generally contain a brief overview, goals and objectives, student activities, and corresponding handouts or materials useful in implementing the lessons. Each lesson contains insights into methods of problem solving and conflict resolution such as adversary, non-adversary, mediation, arbitration, litigation, and negotiated settlement. The document contains brief descriptions of national law-related education (LRE) programs that can serve as points of reference for those interested in LRE programs. (TSV)

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RESOLVING CONFLICTS PEACEFULLY

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Center for Research and Development in Law-Related Education
Wake Forest University School of Law

Resolving Conflicts Peacefully

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Whose Lunch Money Is It?

Memphis City School Teachers
Memphis, Tennessee

ABSTRACT
In a situation familiar to many classrooms, one student is suspected of taking another's lunch money. Questions lead students through a discussion of the school's authority and prevention of similar problems.

GOAL
To show how criminal law has developed and changed to maintain an organized society

CONCEPT
Every person has the right to own property.

OBJECTIVES
The students will be able to:

1. Define property.
2. Tell what legal issues arise when there is a dispute over lunch money.

VOCABULARY

PROPERTY -	thing or things owned
DISPUTE -	difference of opinion; to argue, to discuss, or to debate
STEAL -	take something that does not belong to one
CASE STUDY -	a story telling an everyday conflict

SKILLS
The students can:
1. Develop law-related vocabulary.
2. Listen for details in a case study.
3. Find two points of view.
4. Respond to oral questions.
5. Hypothesize a solution to the missing lunch money.

STUDENT ACTIVITIES

1. Read the case study to the students. Doodle has been caught with dollar bills twice in the last month. Tweedle gets ready to pay for her lunch and finds her dollar missing. Tweedle tells the teacher. The teacher asks Doodle to empty her purse and discovers a dollar bill. Doodle says quickly, "But my mama gave me this for ice cream!"

2. Teacher asks the following questions:

   a. Does the teacher have the right to ask Doodle to empty her purse?
   b. What should the teacher do now?
   c. If the teacher believes Doodle and lets her buy ice cream, what will Tweedle do about lunch money?
   d. If the teacher thinks Doodle took the dollar, how should it be handled?
   e. Should the teacher call Doodle's parents to verify her story?
   f. How could the teacher protect lunch money in the classroom?
   g. How could the students protect their lunch money in the classroom?

EVALUATION

1. Have students illustrate how they would solve the problem by drawing a picture.

2. Have students vote on the question "To whom would you give the dollar, Doodle or Tweedle?" and use their pictures as proof.

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An Island Mediation Process (Hawaiian)

Keith Kalani Akana
Waiau Elementary School
Pearl City, Hawaii

OVERVIEW

Through role play situations, students will experience alternative methods of resolving disputes and conflict. They will experience a mediation process used by many minorities that live in the United States and will thus broaden their appreciation for other systems of justice and governance. This mediation technique is adapted from the Hawaiian problem-solving process called *ho'oponopono*.

GOALS

As a result of this lesson, the student will:

- Be able to identify the steps of the *ho'oponopono* process.
- Make comparisons between it and other problem-solving processes and/or solutions to familiar school situations.
- Evaluate which method best acknowledges students' feelings and own power to come into an agreement.

AUDIENCE

Grades 3-6.

TIME TO COMPLETE

Two class sessions.

MATERIALS AND OUTSIDE RESOURCES

1. Handout, "Classroom Procedures for Ho'Oponopono."
2. Handout, "Role-play Situations."
3. Chalkboard/chalk or chartpaper/pen.

PROCEDURE

BACKGROUND

Traditional Hawaiian society revolved around the family and its ability to survive on an island with limited resources. As a result of the "limitedness" of being on an island, Hawaiians developed a practical way of dealing with problems and personal conflicts. They called this process *ho'oponopono* which means "to make right." Interpersonal relationships were and are very important to Hawaiians. In addition, it was believed that emotional problems and conflict caused physical illnesses. Before a *kahuna* or medical practitioner would treat a patient, *ho'oponopono* was often conducted. In other words, the emotional and spiritual self was healed before the physical self.

Although *ho'oponopono* was originally a religious process, Hawaiian families still practice it in many forms. Social workers in the State of Hawaii are trained in it to service these families, and many department of education schools have adapted it to suit the needs and standards of school. Here is a basic description of the traditional practice:

1. Pule: a prayer to the gods asking for guidance.

2. Kukulu kumuhana ("build a foundation"): The problem was stated and consensus was formed as to the direction and focus of the meeting.

3. Mahiki ("peel off"): Each problem was discussed and corrected. Participants spoke to and only addressed the leader or *haku*. Truthfulness and a spirit of openness was encouraged no matter how painful. The entanglement of resentment, hostility, guilt, depression, and fears was called *hihia*. This had to be unraveled and dealt with lest others be entangled in the cycle of negativity.

4. Ho'omalu: A period of silence should be included for rest, to cool tempers, or to meditate and reflect upon the problem at hand. Participants could not talk about this problem outside of the group.

5. Mihi ("confess"): In traditional society, the *mihi* was often accompanied by gifts of food to family gods.

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6. Hui kala ("forgiveness"): Each person must release and free each other from the grudges and ill-feelings harbored before the *ho'oponopono*.

7. Mo ka piko ("the cord is cut"): If no genuine resolution could be reached because of refusal of the parties to comply to forgiveness and release, "Mo ka Piko" was declared. In a family situation, this meant severance from the family and community. In traditional society, forgiveness and release was preferred over severance.

8. Pule Ho'oku'u: A closing prayer.

OBJECTIVES FOR ROLE PLAYING ACTIVITY

Through role play, students will: (1) experience a mediation process, (2) understand the importance of acknowledging our feelings and emotions that are part of conflict, and (3) learn a problem-solving technique.

CONDUCTING THE ROLE PLAYING ACTIVITY

1. Display and discuss classroom ho'oponopono procedure (see handout). Go over the day before.

2. Select a role play situation (included). Distribute and/or display the role-play situations. When working with groups, each group might have its own situation to role play, with the teacher as mediator. (Feel free to adapt, simplify, and or use your own school-based situations.)

3. Teacher conducts ho'oponopono. The teacher may choose to write out the problem.

4. Teacher and or students write out a solution to problem.

CONDUCTING THE DEBRIEFING

1. Have key participants express how they felt during the role playing. Did they feel their feelings and emotions were acknowledged? Were they satisfied with the outcome?

2. Discuss with class as to how they have observed and/or known similar incidents to have been involved. Which do they like better? Why?

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ROLE PLAY SITUATIONS

1. You always let your friend borrow your school supplies -- pencils, paper, eraser, etc. Today you needed to use a pencil for an important test but your friend would not let you borrow one. You become angry and forcibly take the pencil from your friend's hand.

2. You and your classmates are playing. One classmate refuses to follow the rules of the game. You become frustrated with this person and yell, "Get out of here. You can't play with us anymore."

3. One of your classmates always teases you for being slow in doing your work. Your best friend seems to be listening to this classmate and no longer chooses to play with you at recess. You are hurt.

4. You were playing soccer on the field with a ball you checked out. Another classmate comes along and steals the ball. You chase after him/her but he/she refuses to give it back. You finally call the yard supervisor. The classmate tells the other kids that you are a "sissy." This embarrasses you.

5. One of your classmates is a tattle-tale. Today he/she accused you of taking the missing class money. You are furious.

6. You are standing in the lunch line. One of your classmates lets a late arrival enter the line in front of you. You think this is unfair and you pull him/her out of line. He/she gets mad at you.

CLASSROOM HO'OPONOPONO PROCEDURES

1. Ho'omalu (Quiet period): A brief period of silence for the children to concentrate on the purpose of the session.

2. Kukulu kumuhana (Statement of the problem): The teacher states the problem as he/she understands it.

3. Mahiki (Discussion): The children express themselves and give their views of the conflict. They talk to the teacher who, in turn, asks appropriate questions of others in the group. The teacher, as mediator, must avoid making any judgement.

a. Have Party A give his/her side of the story and how he/she feels about what happened.

b. Restate what Party A has just said.

c. Ask Party B to hive his/her side of the story and how he/she feels about what happened. d. Restate what Party B said.

4. Mihi (Restoration): The children come up with solutions to help restore and mend relationships.

a. Ask Party A if he/she has a solution.

b. Ask Party B if he/she agrees with the solution.

c. If not, ask Party B if he/she has a solution.

d. Keep going back and forth until both/all parties come up with a solution that they agree on and that solves the problem.

5. Huikala (Rectification): When an agreement is made on a solution to the problem, encourage a supportive and natural reaction to the agreement such as a hug, hand-shake, etc. The teacher should write out the problem for large class discussion. Parties may choose to sign the solution but this is not necessary.

6. Ho'oku'u (Release): The teacher announces the close of the session. He/she may restate how the problem has been solved and congratulate the parties both verbally and physically.

ROLE PLAY SITUATIONS

1. You always let your friend borrow your school supplies -- pencils, paper, eraser, etc. Today you needed to use a pencil for an important test but your friend would not let you borrow one. You become angry and forcibly take the pencil from your friend's hand.

2. You and your classmates are playing. One classmate refuses to follow the rules of the game. You become frustrated with this person and yell, "Get out of here. You can't play with us anymore."

3. One of your classmates always teases you for being slow in doing your work. Your best friend seems to be listening to this classmate and no longer chooses to play with you at recess. You are hurt.

4. You were playing soccer on the field with a ball you checked out. Another classmate comes along and steals the ball. You chase after him/her but he/she refuses to give it back. You finally call the yard supervisor. The classmate tells the other kids that you are a "sissy." This embarrasses you.

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CLASSROOM HO'OPONOPONO PROCEDURES

1. Ho'omalu (Quiet period):

   A brief period of silence to concentrate on the purpose of the session.

2. Kukulu kumuhana (Statement of the problem):

   The teacher states the problem as he/she understands it.

3. Mahiki (Discussion):

   Participants express themselves and give their views of the conflict. They talk to the teacher who, in turn, asks appropriate questions of others in the group. The teacher, as mediator, must avoid making any judgment.
   a. Have Party A give his/her side of the story and how he/she feels about what happened.
   b. Restate what Party A has just said.
   c. Ask Party B to give his/her side of the story and how he/she feels about what happened.
   d. Restate what Party B said.

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   Participants come up with solutions to help restore and mend relationships.
   a. Ask Party A if he/she has a solution.
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Lady of the Moon (Hawaiian) A Folktale About Spouse Abuse

Keith Kalani Akana
Waiau Elementary School
Pearl City, Hawaii

LESSON OVERVIEW
Spouse abuse is a growing problem in contemporary society. In traditional Hawaiian society, spouse abuse was frowned upon and discouraged through the telling of stories like "Lady of the Moon". Students will use the folktale as a springboard for discussion about the cause and effects of spouse abuse and participate in role playing and mediation in order to resolve such conflicts.

GOALS OF LESSON
As a result of this lesson, the student will

- Be able to identify some causes and effects of spouse abuse
- Generate possible solutions
- Participate in conflict resolution strategies to mediate such problems.

GRADE LEVEL 2-6

MATERIALS AND OUTSIDE RESOURCES

Handout, "Lady of the Moon"
CRADLE lesson, "An Island Mediation Process"
Chalkboard chalk or chart paper pen
Outside resource speakers on spouse abuse

PROCEDURES/ACTIVITIES

Activity 1, Cause and Effects

A. Background
Lono attempts to flee the abuse of her spouse and family by fleeing to the stars. She returns ridiculed. She flees to the sun but returns scorched. Finally, she flees to the moon where she finds escape. This becomes her **pu'uhonua** (refuge) where she takes her children whom she turns into gourds. The craters of the moon are those gourds, her children. The phases of the moon are caused by her limping having lost a leg to her husband in the escape. The husband ends up with a leg, sorrow, and remorse. Though safe and secure, even Lono loses out.

B. Objective for the Lesson (reading/charting)
After reading, charting will enhance the readers understanding of the cause/effect relationships in the story. Understanding cause/effect relationships will help children to better understand conflict.

C. Conducting the Activity

1. Conduct language experience discussion to elicit children's background knowledge and understanding of spouse abuse. Write responses.

2. Set purpose for reading. "Today you'll be reading about a mother who leaves her family. Find out the reasons for her leaving."

3. Allow time for individual and/or partner reading.

4. Conduct discussion based on chart. You may also wish to turn chart into a worksheet.

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CHART OF CAUSES AND EFFECTS

Effect(s)
Cause(s)

Lono wanting to leave
1. Husband's orders
2. Husband not participating/helping raising family
3. Husband's drinking
4. Husband's physical abuse
5. Children's verbal abuse and non-cooperation

Children pestering the mother
1. Following father's example

Children Crying
1. Mother's determination to leave

Lono returning from the stars
1. Stars laughing at her

Lono returning from the sun
1. Sun scorching her back

Lono losing a leg
1. Husband trying to retain Lono from leaving

Husband's sorrow
1. Wife and children have left.

Activity 2, Drama

A. Background Students should be told that they will be drawing upon their knowledge of the problem to be able to dramatize the story. At this point, don't worry about cultural behaviors; however, do look out for cultural stereotyping.

B. Objective for Activity 2 (Drama) Through drama, the students will personalize and internalize the feelings of the characters.

C. Conducting the Activity (Drama)

1. Assign roles. Those not assigned roles can read text as a choral reading selection.

2. Allow a half class period for rehearsal.

3. Discuss feelings of characters as felt by the actors/actresses and for conduct Activity 3

Activity 3, Mediation

A. Background Refer to CRADLE lesson, "An Island Mediation Process" for background and procedures.

B. Objective for the Lesson (Roleplay) Students will participate in a mediation process that will enable them to resolve conflicts in the future.

C. Conduct the Activity (Roleplay/Process)

1. Follow "Classroom Ho'oponopono Procedures"

2. Debrief and discuss feelings of each:

a. Lono
b. husband/father
c. children
d. teacher or other mediator

Activity 4, Conflict Resolution

A. Background At its simplest level of explanation, conflict resolution refers to finding solutions to disputes and problems.

B. Objective for the Lesson (Roleplay/Drama) Each group will redramatize the story but with a positive resolution to the conflict.

C. Conduct the Activity (Roleplay/Drama)

1. Brainstorm and list possible solutions to the spouse abuse problem with the children.
2. Group children in smaller units in order that each group can have the opportunity to redramatize the story with their own solution.
3. Allow about thirty minutes for selection of solution, assigning of roles, and for rehearsal.

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The Lady of the Moon

retold by Keith K. Akana

The Hawaiians of old believed that a woman, not a man, dwelt in the moon. Her name was Lono. She lived there with her many children. However, getting there was not an easy or an enjoyable thing to do. Before she lived on the moon, Lono lived with her children and husband in Hawaii. Like many married women of that time, Lono cared for the home and looked after her children. It was her job to mend the mats, to gather seafood and shellfish, and to gather the necessary herbs for medicines when needed. She enjoyed working to support her family.

However, there was one thing that made her unhappy -her husband. He was very lazy and the type that just sat around the house being grumpy. He pretended that he couldn't farm, fish, or prepare the food. Because of this, Lono also had to do these jobs that were set aside for the men to do. Besides being lazy, he was also bossy. He would order his wife about. "Lono, bring me something to eat. Bring something to drink too. Lono, look after the kids. Can't you teach them how to behave?

One evening, her shiftless husband returned drunk from a night of partying with his friends. He had left his family home without food to eat because of his laziness. On his return, he hit Lono several times. After awhile his children began to do what their father did to their mother. They began to order her around. "Mommy, bring me something to eat. Mommy, I want something to drink. Mommy, I don't want to do my chores." They also hit her if they didn't get their way.

Though very hurt, Lono stayed with her family. However, she sometimes began to think of ways of escaping this hurt and misery. But because of her great love for her family, she endured this suffering for a long time. After awhile, thoughts of escaping again crossed her mind.

She looked up in the heavens to the stars, "Ah, that will be my refuge way up in the heavens." So she called the rainbow, "Come, Rainbow, and make your arch." Soon after, the rainbow appeared and began climbing up to the stars.

As she approached the blinking stars, she began to hear funny noises. As she came nearer, she realized that their blinking was actually laughter. "Hah, hah, heee, heee, heeee." They were actually laughing and teasing Lono for running away from her family. "Hah, hah, heee, heee, hee. Where can a woman go without a family?", laughed the stars.

"Hah, hah, hah....hah, hah. Your husband and children order you around live a slave.", said the stars teasingly. Lono returned to her family. Luckily they were still asleep. But when the sun rose the next day, Lono looked up to the heavens and saw the majestic sun shining up above. Thinking to herself she said, "Ah, that will be my refuge way up in the heavens." So she called the rainbow, "Come, Rainbow, and make your arch."

Lono mounted the rainbow which took her up to the heavens. Up, up, up went the rainbow. As she neared closer and closer to the sun, however, she began to feel its heat. Perspiration poured from her brows and her back became scorched. Lono began to get dizzy and faint.

While Lono was climbing towards the sun, her children happened to see her. "Mommy, don't leave us and Daddy."

"Enough is enough! I have made up my mind.", said Lono

"Please don't leave us," pleaded the children.

"You have not done your duty and have hurt me. Your father has hit me several times. That would never happen if our elders were here. I will not live here any longer!" However, the children persisted in their

cries. Lono began to think that perhaps their father would now hurt and abuse the children if she left them behind. Tired, burnt, and tearful, Lono returned home.

That night, Lono turned her children into gourds. This would enable her to take them quickly when she escaped. Putting her children into a storage net, Lono called upon the rainbow, "Come, Rainbow, and make your arch."

"Where are you going to now, Lono," asked the rainbow.

"I have tried to escape to the stars but they have only ridiculed me. I have tried to escape to the sun but he only scorched an burned my body. I will go to the moon," said Lono. Once again the rainbow climbed into the heavens taking Lono and her gourds. However, as the rainbow mounted over cloud and wind, the gourds began to rattle against each other on this rough ride. Lono's husband heard this and came out of the house.

"Where are you going, Lono," yelled the husband.

"Someplace far away from you" replied Lono, "and I'm taking the children whom I turned to gourds with me."

"No, I promise that I will be a good husband and father from now on," cried the husband. "You cannot stop me now. I will never let you hit me or order me around like a slave again," cried Lono. Tears began to fall from the husbands eyes as he ran after the rainbow. Due to his sudden quickness, he grabbed hold of Lono's leg. Thinking that she would now come home with him, he pulled the leg with all his might. Instead of toppling Lono to the ground, however, Lono's leg popped off just like a lizard's tail.

The husband tumbled back to earth in tears. Lono continued towards the moon although at this time, lame and crippled. The Hawaiians call the lady of the moon, "Lono the Maimed" and her children "Cluster of Gourds".

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There Has to be a Better Way

Sharon Schnure Laverdure
North Courtland Elementary School
East Stroudsburg, Pennsylvania

AUDIENCE
Grades 4-6.

AIM
To develop a knowledge of various methods for resolving conflict.

OBJECTIVE

The student will be able to define three basic methods for resolving conflict. The methods are as follows:

Compromise - those involved with the conflict each give a little to get a little. If there is a true compromise both parties are satisfied.

Arbitration - this is a very sophisticated way of settling conflict. Students have to agree on an arbitrator to help them make a fair decision. All parties must agree to and feel the arbitrator is wise and fair. All involved must also agree to accept the decision which the arbitrator makes even though the decision is not in their favor.

Intervention of Authority - This is a way that conflict can be resolved.

Students may choose a responsible adult to help them settle their conflicts. The authority figure helps the students work through their conflict.

SUGGESTED ACTIVITY
The class will be broken into three groups. Each group will be assigned one of the three methods. Each group will brainstorm as many examples of the method they were given as they can. After about 10 minutes of work time the teacher will collect the examples. A discussion should be held to make sure the students understand the differences. Examples are listed below:

Example: Bobby loses his pencil and discovers Sally is using it.

Compromise - Bobby and Sally both agree to let Susan use the pencil for the rest of the day and then give it back to Bobby.

Arbitration - Bobby and Sally both agree to let a mutual friend decide who should have the pencil.

Intervention of Authority - Bobby and Sally cannot come to an agreement so their teacher helps solve the problem.

PROCEDURE

1. Develop the vocabulary as listed in the activity section of the lesson.

2. Divide the class into three groups. Each group will then write examples of situations that fit into their given solution for conflict.

3. Share the different situations with the total class to see if the student can pick out the different methods of resolution.

A. Compromise
B. Arbitration
C. Intervention of Authority

4. Finally discuss with the class that there are positive solutions for conflict and that these solutions can work for them.

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Mommy Dear vs. Jason - A Student Who Abuses the System

Viola A. Washington
Malen Brown Junior High School
Henderson, Nevada

LESSON OVERVIEW

In this lesson, the students will learn how a hearing enables people to solve problems.

They will also learn that there are consequences for people who break the law.

OBJECTIVES

1. The students will enact a hearing to learn that it is a legal way of resolving problems.

2. The students will be able to recognize consequences for being truant from school and being involved in gang related activities.

MATERIALS NEEDED

1. Notes to the teacher
2. A mock hearing about a juvenile who abused the law system
3. Your school district's truancy law
4. Role description

PROCEDURES

1. Introduce the lesson by brainstorming ideas on how juveniles sometimes abuse the school system's law. Discuss the meaning of each vocabulary word.

2. Read the law on truancy. Allow a few minutes for students to discuss what they think of the truancy law.

3. Explain to the students that they will enact a mock hearing in which a young man abuses the law. Give background information about the hearing and the characters that are involved in the trial. Assign roles.

4. Allow time (3 or 4 days) for the students to prepare their questions and answers for the trial.

5. On the day of the trial, review the purpose and the role of each character.

6. Debrief the activity by summarizing the learning experience so that the students can evaluate what they have learned.

GRADE LEVEL

Grades 5-6

VOCABULARY WORDS

TESTIMONY, EVIDENCE, SUSTAINED, ALLEGATION, RESPONSIBILITY, ADJUDICATORY HEARING, DISPOSITIONAL HEARING

After discussing the meaning of each vocabulary word, allow the students to give examples of the words by using each one in a sentence. This can be done orally.

NOTE TO THE TEACHER

Each state has laws for students who are truant from school. There are also laws for students who are involved in gang-related activities that harm other people. You may want to review these laws so that the students can better understand what is expected of them and the consequences for breaking the laws.

It is suggested that you ask the school's principal and a lawyer from your school's community to help with the mock trial.

Remind the students that a juvenile court hearing is confidential. Spectators would not be allowed in a real juvenile hearing. Allow the students to discuss why juvenile hearings are confidential.

In order to prepare for the hearing, ask the students to read through the role descriptions. Assign students to roles.

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For your hearing you will need the following people to play the roles of:

JUDGE

COURT REPORTER

CLERK

BAILIFF

JUVENILE COURT ATTORNEY

PRINCIPAL

PROBATION OFFICER

DEFENSE ATTORNEY

MOMMY DEAR

JASON

TEACHER

OTHERS IF NEEDED

AN ACCOUNT OF HOW MOMMY DEAR DECIDED TO REPORT JASON TO JUVENILE COURT

ANTICIPATORY SET

Do you think parents should expect adolescents to be responsible for their behavior, or should parents be responsible for the behavior of their adolescents? (Allow time for a brief discussion)

Read the following account to the students:

Mommy Dear comes home after a hard day of work. She walks into Jason's room to say hello. He isn't in his room. Mommy Dear gathers up his dirty laundry and discovers a report card crumbled in his pocket with the highest grade of D-. She begins to clean his room and finds three opened letters addressed to her from the school stating that Jason has a serious behavior problem, is often truant and has been connected to gang related activities.

Because Jason had been in trouble before, Mommy Dear decided to contact his probation officer. A conference was scheduled with the principal and the truancy officer. Jason's attitude was extremely negative. He felt that because he would be a teenager soon, he should be able to do what he thought was best for himself. Jason pointed out that most of his friends were playing hooky from school, making bad grades and were involved in gang related activities. Throughout the conference, Jason accused his mother of always asking about his friends, telling him what time to be home, and being guilty of constantly yelling.

During the conference, it was decided that Jason should be taken to juvenile court because he had broken two laws. The first law that Jason broke was being truant. The second law that he broke was being involved in gang related activities that caused harm to others.

MOMMY DEAR vs. JASON
A PLAY ABOUT A STUDENT WHO ABUSES THE SYSTEM

I. Adjudicatory Hearing

Bailiff: The court will come to order.

Judge: What case do we have today?

Defense Attorney: This is a case about Jason. The people present in this courtroom are (Name the people involved in the case) Jason is charged with being truant, failing to comply with his parent rules and gang related activities that have caused harm to others.

Juvenile Atty.: I deny the charges.

Defense Atty.: I call _____to the stand.

Judge: Please be sworn in by the clerk.

Clerk: Hold up your right hand. Do you swear that the testimony that you are about to give is the whole truth and nothing but the truth?

Defense Attorney begins questioning the witnesses. Then the juvenile court attorney cross examines the witnesses. After all the witnesses for the defense attorney have testified, the juvenile court attorney may call his witnesses. Remember, each witness must be sworn in by the clerk before taking the stand.

Judge: After hearing the testimony given by all of the witnesses, you must decide if Jason is guilty of the charges. if the judge finds that Jason is guilty, the hearing moves into the second part which is the disposition. if the judge decides that Jason is not guilty, the hearing is over.

II. Dispositional Hearing

Defense attorney recalls the probation officer to the stand. The probation officer is asked to make a recommendation to the court. At this point, each lawyer and the judge may question people involved in the case.

Judge: At the end of the discussion, the judge states the disposition which is similar to a sentence in an adult court. "It is therefore ordered that Jason be _____".

ROLE DESCRIPTIONS

JUDGE: Your job is to listen to the testimony. You may sustain or over rule any objections made by the lawyer. Lawyers should not ask questions that are biased, use harsh words that can intimidate the witness, or are leading questions. You may also ask the witnesses questions. It is your responsibility to decide if Jason is guilty. Your decisions should be based on facts.

DEFENSE ATTORNEY: Your job is to prove that Mommy Dear is a great mom and is constantly being abused by Jason who does not take advice from her, and who is forever in trouble. To prepare for the hearing, you must talk to Mommy Dear so that you can understand her story. Prepare questions that you will ask her and the other witnesses.

JUVENILE COURT ATTORNEY: Your job is to prove with convincing evidence that Jason is a good boy and is only doing what normal boys do at that age. To prepare for the case, talk to Jason, the principal and Jason's teacher.

COURT REPORTER: It is your job to record every word that is said by the lawyer, judge and witnesses during the hearing.

BAILIFF: Your job is to keep order in the courtroom.

THE CLERK: Your job is to swear in the witnesses when they come up to the witness stand.

THE WITNESS: It is your job to present the facts as you see them.

JASON: You are the son of Mommy Dear who is being accused of abusing the school system and the rights of other people. Prepare your testimony.

MOMMY DEAR: You are the mother of Jason. Your testimony should include everything that Jason has done to hurt you and other people.

PRINCIPAL: Review the school district's law on truancy. You may be asked to explain why Jason was sent to your office.

TEACHER: In your testimony, discuss Jason's grades and behavior.

PROBATION OFFICER: Tell why you were asked to work with Jason and what you have done to help him.

GANG LEADER OR OTHER FRIENDS OF JASON'S MAY BE ASKED TO BE WITNESSES.

EXCERPTS OF NEVADA SCHOOL LAW

TRUANT

1. Within the meaning of this Title of Nevada Revised Statutes, any school child shall be deemed a truant who shall have been absent from school without a valid excuse acceptable to the principal of the school.

2. Absence for any part of a day shall be considered as absence for the entire day within the meaning of this section.

HABITUAL TRUANT

1. Any child shall be declared an habitual truant who shall have been deemed a truant three or more times within the school year.

2. Any child who has once been declared an habitual truant and who in an immediately succeeding year is absent from school without a valid excuse may again be declared an habitual truant.

FAILURE OF PARENT, GUARDIAN TO COMPLY WITH PROVISIONS; MISDEMEANOR.

Any parent, guardian or other person who has control or charge of any child and to whom notice has been given of the child's truancy as provided in NRS, and who fails to prevent the child's subsequent truancy within that school year, is guilty of a misdemeanor.

DEBRIEFING

1. If you had been Jason's mom, would you have involved the juvenile court? Explain your answer.

2. Do you think the hearing was a fair way to resolve the problem that Mommy Dear was having with Jason? Why or Why not?

3. What kind of help do you think Jason needs?

4. What are some steps that can be taken to prevent students from being involved in juvenile problems?

5. What do you think would have happened to Jason if Mommy Dear had not reported his wrong doing activities to the authorities?

6. What did you learn from the mock trial?

The Tigers Are Innocent!

Kathy A. Dietrich
Billings, Montana

INTRODUCTION

This unit of study encourages students to critically examine the rights and responsibilities of various parties when building a zoo. Through the use of outside resource people, research, and writing, students will formulate their own opinions and decisions of how a zoo should best be constructed and maintained.

OBJECTIVES

- To provide students with the opportunity to interact with various community organizations
- To help students become better critical thinkers
- To distinguish between the rights and responsibilities of various groups, i.e., zoo owners, zoo animals, cage and exhibit designers, and the general public
- To identify important characteristics and design aspects which must be considered when building a zoo
- To understand the term "liability" and apply its meaning as needed
- To keep and write daily, in a journal or log, activities/events that coincide with this unit

AUDIENCE

Grades 5-8; upper elementary and middle school students. Selected group activities become individual projects for advanced students.

TIME REQUIRED

One to two weeks, depending upon selection of activities.

MATERIALS NEEDED

- Various research books on endangered species and threatened animals
- Addresses for larger zoos throughout the nation (included)
- Large chart paper
- *Faithful Elephants* by Yukio Tsuchiya (for optional extended activity)

PROCEDURE

1. Instruct students to keep a daily log of activities and discussions.

2. Give the students a brief, pretend scenario:

   A community has been planning and looking forward to operating its own zoo for a long time. The zoo that is finally being constructed has planned for a variety of animals, many of which are endangered or threatened. A strong group of animal rights activists plan to take action. Two Siberian Tigers (or whatever you choose) arrive to be housed in the first completed exhibit. The zoo is broken into one night, and the tigers are about to be taken by a pair of the animal rights activists with the purpose of freeing them in their own natural habitat.

3. Divide students into four groups:

   a. Rights of the tigers
   b. Rights of the activists
   c. Rights of the owner of the zoo that has acquired the tigers
   d. Rights of the people who would come to see the endangered animals

Have students brainstorm the rights of these groups and write them on large chart paper. This is an exciting time to use a community resource person during share time. (Perhaps someone from the local humane society.)

4. Have students write for information from various large zoos throughout the country asking for specific ideas and suggestions on zoo design. Request zoos to send pictures of their exhibits and/or plans for construction when possible. (See the attached list)

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5. Invite another community resource person to discuss considerations when designing a zoo. (Perhaps the owner or director of a local zoo.) Prior to the guest's arrival, use large chart paper to record the class's ideas on zoo design. Have your expert add onto and discuss student feelings and ideas. If possible, visit, tour, and complete this activity at the zoo site.

6. Our scenario continues:

> One of the animal rights activists, while trying to free the tigers, becomes injured by the tigers due to a faulty cage design. Although the activists intended to steal the animals, the animals escape that night on their own because of the poor cage design. The animal rights activist sues the zoo owner for negligence.

Use a community resource person, a lawyer, to discuss the terms "liability" and "negligence," and to apply it to this scenario. Review and discuss the three cases provided: *Jones v. Beame* (1976), *Grover v. City of Manhattan* (1967), and *Franken v. City of Sioux Center* (1978). Reorganize the class into six small groups, one for each side (plaintiff and defense) regarding the potential liability of (1) the animal rights activists, (2) the zoo owners, and (3) the cage designers. Have your community resource person lead the follow-up discussion using the group's input. Emphasize and de-emphasize ideas in relation to their pertinence.

An outline of the elements of negligence and liability issues, as well as possible defenses, is included with this lesson for use by the teacher and/or resource person in explaining the "liability" aspects of this scenario to the students.

7. The final activity will be to have the students design their own zoos using information that they have accessed through the discussions, letter writing, research, etc. The students then present their zoo design to the class as a final project. They must be able to apply their new knowledge in the zoo design they formulate. Perhaps groups of three to five students would be appropriate since this is a large project and will require considerable brain power.

EXTENSION ACTIVITIES

- Assign students to go to the public library to access microfiche and newspapers still available that covered the construction of a zoo in your area. Do short reports on how the zoo progressed, perhaps time-lines.
- Students can read the short story *Faithful Elephants* by Yukio Tsuchiya. This is a true story about elephants in a Japanese zoo.
- Students can research endangered and threatened animals that may be seen in zoos throughout our nation.
- A further step in the scenario: A local judge decides that the tigers must be destroyed when they injure the activist and escape. The judge's concern is public safety. Discuss class concerns, emotions. What would the students do?

EVALUATION

There are several means by which the teacher can monitor progress and evaluate students authentically: (1) observation of students in whole group and small group discussions; (2) individual participation; (3) an established rubric; (4) grading written research papers; (5) daily journal evaluation; etc. The most important means of authentically evaluating students will be through their zoo designs and presentations to the class.

DEBRIEFING/CLOSURE

1. Are the rights of any one group more important than others?
2. What are some examples of liability?
3. Classify zoos according to information obtained. Use a sliding scale of 1-5, 1 being the most humane and conscious of animal rights and public safety to 5 being the least conscious, perhaps cruel and unsafe. How did you arrive at your ratings?
4. What are some considerations you should analyze when designing and constructing a zoo? Can you prioritize these considerations?
5. Should there be regulations on what kinds of cage exhibits must be provided for various animals?

TIPS FOR THE TEACHER

Through integration, students can be working on this project during many different subject areas. Unit length will vary according to how many extension activities your class conducts, if any.

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- Hahn, Emily. *Animal Gardens.* Doubleday, 1967.

SOME ZOOLOGICAL ADDRESSES

Zoo Montana
c/o Jim Duncan
2100 South Shiloh Road
Billings MT 59106

Alaska Zoo
4731 O'Malley Road
Anchorage AK 99516

The Phoenix Zoo
P.O. Box 5155
Phoenix AZ 85010

Minnesota Zoological Garden
12101 Johnny Cake Ridge Road
Apple Valley MN 55124

Cincinnati Zoo and Botanical Garden
3400 Vine Street
Cincinnati OH 45220

Cleveland Metroparks Zoological Park
3900 Brookside Park Drive
Cleveland OH 44109

New York Zoological Park
185th St. & Southern Blvd.
Bronx NY 10460

Chicago Zoological Park
Brookfield Zoo
3300 Golf Road
Brookfield IL 60513

Marine World/Africa USA
Marine World Parkway
Redwood City CA 94065

Atlanta Zoological Park
800 Cherokee Ave SE
Atlanta GA 30315

Baltimore Zoo
Druid Hill Park
Baltimore MD 21217

Detroit Zoological Park and Belle Isle Aquarium
8450 West 10 Mile Road
P.O. Box 39
Royal Oak MI 48068

St. Louis Zoological Park
Forest Park
St. Louis MO 63139

Philadelphia Zoological Gardens
34th Street and Girard Avenue
Philadelphia PA 19104

Overton Park Zoo and Aquarium
Memphis TN 38112

Dallas Zoo in Marsalis Park
621 East Clarendon Drive
Dallas TX 75203

San Antonio Zoological Garden and Aquarium
3903 North St. Mary's
San Antonio TX 78212

Milwaukee County Zoological Park
10001 West Bluemound Road
Milwaukee WI 53226

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JONES v. BEAME

382 N.Y.S.2d 1004
Supreme Court of New York
April 12, 1976

FACTS

The plaintiffs were individual citizens who sought to close three zoos and to transfer the animals to the New York Zoological Park (the Bronx Zoo) due to the conditions in the city zoos. The defendants were the City of New York, as well as veterinarians who contracted with the City to take care of the animals' medical needs. The complaint sought a declaration that conditions in the city zoos constitute cruelty to animals in violation of the law.

The complaint stated that the animals are almost completely deprived of any meaningful or effective veterinary care and that serious diseases and injuries are frequently permitted to go undiagnosed or untreated for long periods of time, or are misdiagnosed and treated improperly. The plaintiffs also contended that the animals are kept in habitats that are not proper for them and in fact are detrimental to their physical and mental health. They also alleged that the animals are not properly protected from the brutality that can be expected from members of the general public -- small and defenseless animals have been attacked in their cages, and other animals have been hurt or killed by attempts to rescue tormentors upon whom they have turned. In addition, numerous animals have been stolen from the zoos and their caretakers are wholly untrained in animal care. An example is a Patas monkey that exhibits symptoms of classic cage neurosis by jumping to and fro from front feet to hind feet while remaining on the same spot for minutes on end. The exercise amuses the public, but the keepers are ignorant of the distress that gives rise to the neurosis. Nocturnal animals are forced to be in daylight, without even a simple box in which to seek refuge. Elephants are housed in a pen measuring two by one-and-one-half lengths. It appeared that water had not been changed in several months, and the food preparation area was also dirty.

The Agriculture and Markets Law makes it a misdemeanor to engage in cruelty to animals, to neglect to provide confined animals with proper aid, food, shelter, and water, or to fail to exercise due care in safeguarding the public from attack by a wild animal. The enforcement of this law is left to public officials; there is no specific provision that would permit a citizen to file a civil lawsuit for violation of this law.

ISSUE

Do these citizens have standing to sue the city for violation of the Agriculture and Markets Law by virtue of blatant cruelty to animals, and does the maintenance of zoos in violation of this law constitute a proper cause of action for the waste of public funds?

DECISION

Yes to both questions. Denial of standing to these plaintiffs would make it impossible for the courts to scrutinize the lawfulness of the city's maintenance of its zoos. The alternative, such as relying on a city employee to lodge criminal charges against the Mayor of New York, is unlikely. In addition, the use of public property for illegal purposes (in violation of the Agriculture and Markets Law) states a proper action for the waste of public funds.

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GROVER v. CITY OF MANHATTAN

424 P.2d 256
Supreme Court of Kansas
March 4, 1967

FACTS
Jimmy Lee Grover, aged ten, was injured while visiting the Sunset Zoo in September of 1962. He was attacked and bitten by a coyote which had escaped from its enclosure at the zoo and was running loose in the area frequented by visitors. On Jimmy's behalf, his parents sued the city for negligence in allowing the animal to run loose. The lower court ruled that the city was immune from liability because the operation and maintenance of the zoo is a governmental function and "the coyote" running loose did not constitute a nuisance.

ISSUE
Is a city liable in damages for its negligent operation of a zoo?

DECISION
No. Generally, city governments and officials are not liable for negligence in the performance of governmental functions, i.e., activities engaged in for the benefit of the general public and in performance of a duty imposed on the city. In an earlier case, Hibbard v. City of Wichita, 159 P. 399, the court held that the maintenance of a zoo is a governmental function, and thus cities are not liable in damages for injuries inflicted on visitors by animals through the negligence of the city's officers or agents. In order for a function to be considered proprietary (and therefore subject the city to potential liability), there must be shown some special local benefit that the city and its inhabitants receive rather than the public at large. Zoos are maintained for the same reason as parks -- for the pleasure and education of the entire public. Therefore, the city cannot be held liable for damages in its maintenance and operation of the zoo.

With regard to the issue of the city's liability for maintenance of a nuisance, this was an isolated instance of a temporary nature. The coyote was not outside its pen other than on the occasion when the boy was injured, so it is not a nuisance case.

NOTE
There are cases in which the maintenance and operation of a zoo have been considered proprietary or "corporate" functions for which the city may be held liable. *See* Hyde v. City of Utica, 20 N.Y.S.2d 335 (New York); City of Mangum v. Brownlee, 75 P.2d 174 (Oklahoma); and City of Fort Worth v. Wiggins, 5 S.W.2d 761 (Texas). Courts in California and Kansas have held that this is a governmental function. *See* McKinney v. City and County of San Francisco, 241 P.2d 1060 (California); Hibbard v. City of Wichita, 159 P. 399 (Kansas).

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FRANKEN v. CITY OF SIOUX CENTER

272 N.W.2d 422
Supreme Court of Iowa
December 20, 1978

FACTS
The plaintiff, Arnold Franken, was injured when he placed his hand inside a cage to pet a 300-pound Bengal tiger named "Stubby." The tiger was being held in temporary quarters, a steel cage in a warehouse, until permanent quarters could be prepared for him at a Minnesota zoo. Despite being raised with affection training and having a history of tame behavior, Stubby was housed for a prolonged period of time in a small cage, and this confinement apparently caused him to become hyperactive and aggravated. There was evidence that the plaintiff has been warned not to put his hand in the cage, but he did so, and the tiger grabbed it with his jaws, causing serious lacerations. The trial jury found that the defendant was not liable for damages.

ISSUE
Was the jury properly instructed on the assumption of risk defense?

DECISION
No; the jury was not properly instructed on the application of the assumption of risk defense and its dependence on the plaintiff's actual knowledge of the risk. A possessor of a wild animal is subject to strict liability to another for harm done by the animal to the other, even though the possessor has exercised the utmost care to confine the animal or to otherwise prevent it from doing harm. (Restatement Second of Torts Section 507(1)) Assumption of risk is a defense to a claim of strict liability. Assumption of risk is where someone is barred from recovering damages if he or she unreasonably subjected him or herself to the risk of harm by the animal. The defendant must show that the plaintiff had actual knowledge and full appreciation of the risk of harm from the tiger at the time he received his injuries. The court held that the jury should have been instructed fully about the assumption of risk defense, specifically with regard to the plaintiff's actual knowledge of the risk involved, and that they could have confused this standard with the objective standard of ordinary care. The case was reversed and remanded for a new trial.

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OUTLINE ON CIVIL LIABILITY

NEGLIGENCE:

Elements:
(1) Existence of a duty on the part of the defendant to conform to a specific standard of conduct (standard of care) for the protection of the plaintiff
(2) Breach of that duty
(3) Breach is the proximate cause of the resulting injury or damage
(4) Actual injury or damage

The standard of care is that of a reasonable person; the defendant's conduct is measured against what an average (reasonable) person would do under the same circumstances. Exceptions: Children are held to a standard of a child of similar age, education, intelligence, and experience. Professionals are held to a higher degree of care appropriate to someone with the knowledge and skill of a member of that profession in good standing. (Note: physical characteristics of defendant may affect standard of care expected.)

Proximate cause: the act must be the cause of the injury, i.e., the injury would not have occurred but for the defendant's breach of his/her duty, or the breach was a substantial cause of the injury, or there was an uninterrupted chain of events from the negligent act to the plaintiff's injury.

DEFENSES TO NEGLIGENCE:

Contributory negligence (not a defense to strict liability -- see below)
Plaintiff contributed to his/her own injury, thus barring him/her from recovering unless the plaintiff's negligence was less serious or no more serious than that of defendant. (Most states now allow some form of this, referred to as "comparative negligence.") However, the person who has the "last clear chance" to avoid an accident and fails to do so is still liable for negligence.

Assumption of risk
Plaintiff is not allowed to recover damages if the plaintiff assumed the risk of damage caused by the defendant's act. Plaintiff must have knowledge of the risk and must have proceeded voluntarily in face of the risk.

STRICT LIABILITY:

Extra elements beyond normal "negligence":
Existence of an *absolute* duty on the part of the defendant to ensure safety

Liability for Animals:
The owner is ***strictly liable*** for injuries caused by dangerous animals so long as the injured person did nothing to bring about the injury.

THE TRIAL OF GANDHI'S DANDI SALT PARTY
An examination of Mohandas Gandhi's campaign of nonviolence to win the independence of India from Great Britain

Bobbie DeLoach
Omaha, Nebraska

ABSTRACT
This lesson will help students look at the historical battle waged by Mohandas Karamchand Gandhi for the independence of India against colonial power Great Britain. This lesson was designed to be the culminating activity of a study of the Indian Independence Movement. The scripted trial will allow students to weigh the value of established law and the use of civil disobedience to call attention to unjust laws. Included is a short biography of Gandhi; excerpts from a letter Gandhi wrote to the Viceroy, Lord Irwin; a copy of the arrest warrant for Gandhi; and a student handout which explains why the trial really didn't take place and how Gandhi's life ended.

GOALS
As a result of this lesson students will:
- gain knowledge of Gandhi's movement of civil disobedience in the struggle for self rule in India
- analyze the role of the responsible citizen in a democracy
- participate in the trial process

AUDIENCE
Grades 7-9; Junior High/Middle School students in Social Studies units covering India and Eastern Asia, or in American History in connection to Martin Luther King and the civil rights movement.

TIME REQUIRED
The actual trial can be done in one to two class periods, but an additional class period will be needed to prepare and practice for the trial. One class period should be given for debriefing the trial and follow up discussion and evaluation. (Total: 3 to 4 class periods.)

MATERIALS NEEDED
1. Appendix one, Handout #1: Background reading about Gandhi's life and political movement. (Some texts may have adequate materials.)
2. Appendix two, Handout #2: Trial Script
3. Appendix three, Handout #3: What Really Happened
4. Appendix four, Handout #4: Arrest Warrant
5. Appendix five, Handout #5: Gandhi's Letter to Lord Irwin
6. Appendix six, Vocabulary Sheet
7. Nice but not essential: a gavel and black robe for the judge

PROCEDURES
The students will have done the background reading on Gandhi and the independence movement in India. The class will have discussed in large group session the incidents that have a bearing on the trial (i.e. the Amritsar Massacre, the Salt March, etc.).

The script of the trial will be passed out to the class and the roles described. The teacher may assign roles, students may volunteer, or small groups may be assigned to do the prosecution, defense, or jury/court officials, and assignment of roles can come from within those groups.

Practice time should be planned for the day prior to presentation to allow for student questions about content, vocabulary, and trial processes.

The activity could be planned for a Show Trial by one or more classes to be presented as a Team Activity for the entire team at the middle school level.

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DISCUSSION QUESTIONS
(About the trial process)

1. Do you agree with the verdict of the jury?
2. Which arguments do you think most influenced the decision of the court?
3. Which witnesses were the most believable?
4. Which witnesses were the most damaging to Gandhi's case?
5. Which testimony was the most helpful to Gandhi's defense?
6. What were the disputed areas between the defense and the prosecution?

DISCUSSION

1. Can you think of other examples of civil disobedience or nonviolent methods used to try to get things changed? (Currently or historically.)
2. In a democracy, is it right for a citizen to disobey a law in order to try to get that law changed?
3. Some have said that our system of justice is not perfect. How would you react to that statement?

EVALUATION
STUDENTS will write a short paragraph for a culminating activity:

Gandhi believed that nonviolence is more effective than violence in calling attention to conditions that need to be changed. Do you agree with him? Why or why not? Support your opinion.

TIPS FOR THE TEACHER
Physically organize the classroom into a court setting. Make things as realistic as possible.

Layout of Classroom:
Judge's bench at the front of the room, centered. Bailiff's chair and desk on the judge's right (audience's left). Witness' chair on the judge's left (audience's right). Jury box on the far right of the room, between the witness' chair and the side wall. Prosecution/ plaintiff's table and defense table facing judge's bench, witness chair, and bailiff. Prosecution/plaintiff's table should be on the side nearest the jury box, since that party has the burden of proof.

Spend time with those students who will serve in the jury to emphasize the importance of the role they will play. Include the entire class in practice time and explanations that will take place the day before the actual trial.

To adapt for upper grade/gifted students: Have the class write their own mock trial for Gandhi. The class could be divided into two teams, prosecution and defense. After adequate research, each of these teams could prepare their case for trial, determining witnesses, writing their own questions, etc.

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APPENDIX #1
MOHANDAS KARAMCHAND GANDHI, GREAT SOUL OF INDIA

Mohandas K. Gandhi is a person who has continued to draw the attention of the world long after the time period in which he lived. Students of history still read about the man who called the attention of the world to the plight of his country in its fight for independence from colonial giant Great Britain. Gandhi was a man of small stature, who dressed most often in a dhoti, the garment of the ordinary Indian man. He traveled throughout the country of India to unite his fellow countrymen in his campaign against the country's occupation by the British.

Gandhi was born on October 2, 1869, in Porbandar, India. His father was prime minister in the state of Porbandar, and his mother was a devout Hindu who shared her strong religious feelings with her son. Gandhi married at the age of 13, which was not unusual for the arranged marriages of that time. He continued his education and eventually went to England to study law. When he returned to India, he had difficulties earning a living as an attorney and finally took at job with an Indian firm in South Africa.

Upon arrival in South Africa, Gandhi found that Indian people there suffered severe discrimination because of the laws. He became the lawyer for the Indian laborers who had come to Africa to work. He stayed in South Africa some 21 years, resisting the colonial British laws that he felt to be unfair. His resistance was always nonviolent, and by the time he left to return to India, his countrymen in South Africa were receiving fairer treatment by the government.

When Gandhi arrived back in India, he was greeted as a hero for the things he had done in South Africa. The Indian people were hoping that Gandhi could accomplish the same things in India because they, too, were governed by the laws of the ruling British colonial government. Gandhi's first task was to learn as much as he could about the situation in India since he had been gone 21 years. He took time to travel throughout the country, talking with the villagers and observing the problems first-hand. He later became a leader in the Indian National Congress party, through which he hoped to work for the improvement of his countrymen.

Gandhi became very influential with the people of India. He felt that he had to teach his followers the ways of nonviolence in order for his campaigns of civil disobedience to be effective. When they did things which did not please him, he would fast. The Indians had so much respect for Gandhi that they feared for his health, and they would do things Gandhi 's way so that he would fast no more. On one occasion when a large group of his followers were gathered to protest a British ban on a visit by Gandhi in the town of Amritsar, the British commander ordered his troops to fire into the crowd, killing several hundred people. The killing was called the Amritsar Massacre of 1919, but there was no mass uprising by the people because of Gandhi's insistence that there be no retaliation.

Gandhi also took it upon himself to teach the Indian village people to spin their own cotton so they would not have to buy it from the British mills. This was but one step toward establishing economic independence, which Gandhi thought was necessary for India. On another occasion, Gandhi deliberately broke the salt laws which required that all Indians pay a tax on salt to the government and decreed that Indians could not process their own salt but must buy it from the government. Gandhi was eventually arrested and thrown in jail for this offense. By the end of his life, Gandhi had spent a total of 2338 days in jail.

Note: Mr. Gandhi was often called Mahatma -- a term of reverence for a wise and holy person.

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APPENDIX #2
The Trial of Gandhi's Dandi Salt Party

An examination of Mohandas Gandhi's campaign of nonviolence to win the independence of India from Great Britain

A hypothetical encounter between Mohandas Gandhi and British rule in Colonial India

CHARGES

1. Illegally making salt
2. Inciting to riot or sedition (words or actions that make people rebel against the authority of the government).

WITNESSES

Lord Irwin, Viceroy of India
Webb Miller, news correspondent
Sgt Major Smythe, salt tax collector
Mme. Sarojini Naidu, Gandhi follower
Jawaharlal Nehru, Congress Party president
Mohandas K. Gandhi

TRIAL SCRIPT

SCENE: A courtroom in Bombay. Gandhi sits at the defense table with his attorneys.

BAILIFF: All rise. The District Court of Bombay is now in session with the Honorable Sir C.N. Bloomfield presiding. The case of the Crown Colony of India vs. Mohandas K. Gandhi will be heard.

JUDGE: Be seated. This is the case of the Crown versus M.K. Gandhi on the charges of civil disobedience for illegally making salt and inciting to riot, an act of sedition against the Crown. Court is now in session. (GAVEL RAPS) Is the Advocate-General ready?

PROSECUTION #1: We are, Your Honor.

JUDGE: Is the defense ready?

DEFENSE: We are, Your Honor.

JUDGE: Does the Prosecution have an opening statement?

PROSECUTION #1: Yes, Your Honor.

JUDGE: Counsel, you may proceed with your opening argument.

PROSECUTION #1: We represent His Majesty's government and, through the testimony of witnesses we will present today, we will prove that Gandhi did willfully break the law dealing with the production of salt and incite many of his followers to break those same laws. Lord Irwin will testify that Gandhi did intentionally march to the sea to illegally pick up salt. We will introduce a letter written to Lord Irwin by Gandhi in which he states his intention to break the salt laws. Webb Miller, an eyewitness to the actual march to Dandi and to the picking up of salt on the coastline, will tell you the person he saw gathering salt on the morning of April 6 was Mohandas Gandhi. Sgt. Major Smythe will then tell you how the disciples of Mr. Gandhi disrupted the gathering of the salt tax following the March to Dandi. Our last witness will be Madame Naidu, the leader of the raid on the Salt Works at Dharasana following the arrest of Gandhi, who will, under protest, tell you how she accompanied Gandhi on his March to the Sea. The testimony of these witnesses will leave no doubt in your mind about the guilt of Mohandas K. Gandhi on the charges of illegally making salt and of inciting his followers to acts of civil disobedience and noncooperation with the government of Great Britain.

JUDGE: Thank you. The Court will now hear the Defense's opening statement.

DEFENSE #1: Yes, Mohandas Gandhi did pick up several lumps of salt along the shoreline at Dandi on April 6, but the defense will show his actions were justified because he had attempted to negotiate with the Viceroy to resolve these inhumane salt laws. The defense witnesses will tell you how Lord Irwin and the British government refused to negotiate in good faith. The defense will show you how Gandhi answered to a natural law which is higher than

the laws made by man, such as John Locke's proposition that when a people are bound by tyranny they have the right to rise up and throw off those chains. While Mahatma Gandhi may have technically violated the British law, it is the position of the defense that the actions taken by Mr. Gandhi were indeed justified under the natural laws of God. Our witnesses will tell you of Gandhi and how a noble and innocent man has willingly placed his personal freedom in jeopardy for the independence of India.

JUDGE: Will the Prosecution please call its first witness?

PROSECUTION #2: The Crown calls Lord Irwin.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

IRWIN: I do. (sit down)

PROSECUTION #2: Lord Irwin, what is your official position in India?

IRWIN: I am His Majesty's representative in India. As Viceroy, I oversee all interests of the British Empire in India.

PROSECUTION #2: Do you know the defendant?

IRWIN: Yes.

PROSECUTION #2: How did you first meet Mr. Gandhi?

IRWIN: When I took over this position from Lord Reading, I was charged with the job of preparing for the committee that was coming from England to see if the people of India were able to govern themselves. Part of that preparation was to engage in talks with the Indian leadership and persuade them to consider a compromise with the Simon Commission in the dispute over the question of self-rule for India. I spoke with Mr. Gandhi as well as many of the members of the Indian Congress at that time.

PROSECUTION #2: Through your talks with Gandhi did you learn of Mr. Gandhi's political views?

DEFENSE #2: Objection. Hearsay. Lord Irwin may not testify to the views Mr. Gandhi expressed.

PROSECUTION #2: Gandhi's statements to Lord Irwin go to state of mind and are relevant to show the intent of Mr. Gandhi to violate the Salt Laws.

JUDGE: Objection overruled. (To the witness) You may answer the question.

IRWIN: I found Mr. Gandhi to be friendly, without bitterness, but outspoken in his belief that we, the British, were at fault in not allowing self-rule for India.

PROSECUTION #2: Could we have this document marked Exhibit A? (The attorney shows the letter to defense counsel, then hands the letter to the clerk. The clerk takes the letter from the attorney, marks it, and returns it to the attorney).

PROSECUTION #2: I'm handing you what's been marked as Prosecution Exhibit A. Do you recognize this document?

IRWIN: Yes.

PROSECUTION #2: Could you identify Prosecution Exhibit A?

IRWIN: Yes, this is a letter from Mohandas Gandhi that I received on March 2nd of this year.

PROSECUTION #2: I move that Prosecution Exhibit A be admitted into evidence.

JUDGE: Exhibit A is admitted.

PROSECUTION #2: Would you read the underlined portion of the letter to the court?

IRWIN: *Before embarking on civil disobedience and taking the risk I have dreaded to take all these years, I would fain approach you and find a way out .... I know that in embarking on nonviolence, I shall be running what might be termed a mad risk .... Conversion of a nation that has consciously or unconsciously preyed upon another, far more numerous, far more ancient and no less cultured than itself, is worth any amount of risk .... But if my letter makes no appeal to your heart, on the eleventh day of this month I shall proceed, with such co-workers of the Ashram as I can take, to disregard the provisions of the Salt Law.*

PROSECUTION #2: Did you respond to Mr. Gandhi's letter?

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IRWIN: I refused to see Gandhi, but I did send a reply in which I told him that I regretted that he felt he must do something that would cause him to be in violation of the law. I consulted with other government officials, and we decided to allow him to go ahead with whatever he had planned. We had hoped that the Indian people would not go along with his plans.

PROSECUTION #2: Lord Irwin, did you attempt to stop Gandhi from his march to the sea?

IRWIN: No, I did not.

PROSECUTION #2: Thank you, no further questions, Your Honor.

JUDGE: (To defense counsel) Your witness.

DEFENSE #2: What did Gandhi tell you was his justification for disregarding the Salt Law?

IRWIN: I do not know why Gandhi decided to ignore the Salt Laws. There can be no justification for opposing the lawful and responsible government of a nation.

DEFENSE #2: Lord Irwin, you just read a portion of Gandhi's letter. Will you look at it again and tell us what were Gandhi's objections to the ruling government of India?

IRWIN: He criticized the system of taxes, in particular the salt taxes. He also demanded the reduction of the land revenues, military expenditures, and government salaries by 50 percent; he demanded the discharge of all political prisoners, the enforcement of the constitutional guarantees of freedom of expression; and finally the abolishment of the Salt Laws which did not permit the villages to use their own locally available salt.

DEFENSE #2: Lord Irwin, what is your salary?

PROSECUTION #2: Objection: relevance.

DEFENSE #2: Goes to Gandhi's intent, Your Honor.

JUDGE: Overruled.

IRWIN: It is something over 21,000 rupees ($7,000) per month plus other benefits.

DEFENSE #2: That works out to about 700 rupees per day. Do you know what the average Indian's wage is?

IRWIN: I do not know positively, but in his letter Mr. Gandhi said that it was less than two annas (4 cents) a day.

DEFENSE #2: So, assuming Mr. Gandhi is correct, is it fair to say that your salary is 5,000 times what the average Indian makes?

IRWIN: Yes.

DEFENSE #2: Lord Irwin, do you know how much the salt tax costs the average Indian?

IRWIN: I have been told that it averages out to three days' income for most.

DEFENSE #2: Do you think that is an excessive amount, your Lordship?

IRWIN: I think we all must pay our part.

DEFENSE #2: Lord Irwin, do you understand that the average Indian must use more salt in his diet than you will use in yours because of the type of manual labor he does.

IRWIN: Yes. I suppose so . . . .

DEFENSE: #2: Would you agree then that the poor pay more in salt taxes than the rich in India?

IRWIN: Yes.

DEFENSE: #2: Do you consider this responsible government?

IRWIN: This is the way the law is written. I did not write the law.

DEFENSE #2: But, do *you* consider it to be responsible government?

IRWIN: I don't know.

DEFENSE #2: Did you consider it responsible government to massacre hundreds of Indians because they were attending a political meeting in Amritsar in 1919?

IRWIN: My dear sir, that incident was handled by a former Viceroy, and I have no firsthand knowledge of the events at that time. I do know that His Majesty's government deeply regrets the actions of the British Army at Amritsar.

DEFENSE #2: No further questions, Your Honor.

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JUDGE: The prosecution may call its next witness.

PROSECUTION #3: Your Honor, the prosecution calls Webb Miller.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

MILLER: I do.

JUDGE: You may be seated.

PROSECUTION #3: Sir, will you state your name and occupation for the record?

MILLER: My name is Webb Miller, and I'm a newspaper correspondent for United Press.

PROSECUTION #3: Mr. Miller, where were you on April 6 of this year?

MILLER: I was in Dandi.

PROSECUTION #3: Why were you in Dandi on that date?

MILLER: I had been covering Gandhi's trip to that seacoast city for my newspaper syndicate.

PROSECUTION #3: Do you see Gandhi in the court room today?

MILLER: Yes.

PROSECUTION #3: Can you identify him for the court?

MILLER: Yes, he is sitting at the table with the defense counsel.

PROSECUTION #3: Let the record show that Mr. Miller identified Mohandas Gandhi, the defendant.

PROSECUTION #3: Did you observe Gandhi do anything in Dandi on April 6?

MILLER: Early on the morning of April 6 Mahatma Gandhi walked out into the sea and bathed and purified himself according to the Hindu custom. On his way out of the water at approximately 8:30 a.m., he picked up a lump of salt from the beach.

PROSECUTION #3: Thank you, Mr. Miller. The prosecution has no further questions.

JUDGE: Does the defense have questions for this witness?

DEFENSE #3: We do, Your Honor.

DEFENSE #3: Mr. Miller, were you with Gandhi and his party on the night of April 5?

MILLER: Yes, I was.

DEFENSE #3: Did you speak with Gandhi on that occasion?

MILLER: Yes, I and several reporters, foreign and Indian, talked with Gandhi that evening.

DEFENSE #3: Did Gandhi tell you what he hoped to accomplish by breaking the salt laws?

MILLER: When we asked him, he said . . . . "I want world sympathy in this battle of Right against Might."

DEFENSE #3: I have no other questions for Mr. Miller.

JUDGE: Mr. Miller, you may step down. The prosecution may call its next witness.

PROSECUTION #4: Your Honor, the prosecution calls Sgt. Major Smythe to the stand.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

SMYTHE: I do.

JUDGE: Be seated.

PROSECUTION #4: Sgt. Maj. Smythe, what is your current assignment in His Majesty's service?

SMYTHE: I am in charge of the collection of the salt tax for the western provinces of India.

PROSECUTION #4: How long have you had this assignment?

SMYTHE: Three years.

PROSECUTION #4: Did the Salt March led by the defendant have any effect on the collection of the salt tax?

SMYTHE: Yes sir.

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PROSECUTION #4: What was that effect?

SMYTHE: In the weeks following April 6, Indians everywhere were breaking the Salt Laws by gathering salt, selling salt illegally, setting up illegal salt factories, and picketing government shops. The collection of the taxes on salt came to a standstill.

PROSECUTION #4: Were the people who were engaged in these illegal acts followers of Gandhi?

DEFENSE #4: Objection: foundation.

JUDGE: Sustained.

PROSECUTION #4: Sgt. Major Smythe, can you describe the garments of the people who were breaking the salt tax?

SMYTHE: Yes, sir. They were wearing caps, shirts, and dhotis made of a rough, homespun cloth.

PROSECUTION #4: Based on your personal experience as an officer in His Majesty's service in India, what is the significance of this type of dress?

SMYTHE: It is common knowledge that the followers of Gandhi wear clothing of homespun material because he has asked the people to spin their own thread and weave their own cloth to avoid buying English textiles.

PROSECUTION #4: Were people arrested for breaking the Salt Laws?

SMYTHE: Yes, sir. The Viceroy ordered mass arrests. According to our official records, by the end of the month, we had arrested over sixty thousand offenders.

PROSECUTION #4: Thank you Sgt. Major Smythe. I have no more questions.

JUDGE: Does the defense wish to question the Sgt. Major?

DEFENSE #4: Yes, Your Honor, we do.

PROSECUTION #4: Sgt. Major, you participated in these arrests, did you not?

SMYTHE: Yes, I did.

DEFENSE #4: None of these people were violent when they were arrested, were they?

SMYTHE: No sir, none of the arrests at which I was present resulted in any violence on the part of the followers of Mr. Gandhi.

DEFENSE #4: Thank you, Sgt. Major Smythe. No more questions.

JUDGE: Sgt. Major you may step down. Does the prosecution have additional witnesses?

PROSECUTION #5: Yes, our next witness is Madame Sarojini Naidu.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

NAIDU: I do.

BAILIFF: You may be seated.

PROSECUTION #5: Your Honor, Madame Naidu is a declared follower of Gandhi and we request the court to recognize her as a hostile witness and allow the prosecution to ask leading questions.

JUDGE: I'll allow you to proceed, subject to later objection by the defense.

PROSECUTION #5: Madame Naidu, you know the defendant, don't you?

NAIDU: Yes.

PROSECUTION #5: How long have you known the defendant?

NAIDU: I met Mohandas Gandhi in 1914 while we were both in London during World War I.

PROSECUTION #5: You accompanied Gandhi on his so-called Salt March, didn't you?

NAIDU: I accompanied him on the march for freedom.

PROSECUTION #5: Following Gandhi's arrest, you later carried out his plan for civil disobedience by leading an assault on Dharasana Salt Works, didn't you?

NAIDU: I led a *march* on Dharasana.

PROSECUTION #5: No further questions of this witness, Your Honor.

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JUDGE: Does the defense wish to question this witness?

DEFENSE #5: We do, Your Honor. Madame Naidu, will you please describe your relationship with Mr. Gandhi?

NAIDU: I am a disciple and good friend of Gandhi. We have worked together to achieve the self-rule of India through the Indian National Congress party for many years. We met in London in 1914, and I knew then that Mahatma Gandhi would change our world. I am pleased to say that I have been a part of Gandhi's inner circle since 1917 and have been a dedicated advocate of nonviolent protest during these past 13 years.

DEFENSE #5: Madame, the prosecution asked about the incident at the Dharsana Salt Works. Can you tell us what happened on that occasion?

NAIDU: After we reached the compound, column after column of Congress volunteers advanced to the compound gates and were beaten back by native policemen with steel lathis. None of the marchers so much as raised an arm to ward off their blows. There was no fight. The marchers simply advanced until they were struck down. Over 320 marchers were injured. Webb Miller was there and wrote a column about the incident which appeared in over 1,000 newspapers here and abroad.

DEFENSE #5: The defense has no further questions of Madame Naidu.

PROSECUTION # 5: Your Honor, I have some questions for Mrs. Naidu on redirect.

JUDGE: You may proceed.

PROSECUTION #5: Madame Naidu, Gandhi's followers have resorted to violence on occasion, haven't they?

NAIDU: There have been some outbreaks of violence, but not with Gandhi's approval. In fact, Mahatma fasted until the violence stopped.

PROSECUTION #5: Madame, isn't it unrealistic to expect there will never be violence if you encourage people to engage in acts of civil disobedience?

NAIDU: Gandhi has devoted many years to teaching the process of active resistance which requires no reactions or violence in response to the actions of government representatives such as the police or army.

PROSECUTION #5: Yet despite that, some of his followers have engaged in violent acts, correct?

DEFENSE #5: Objection, Your Honor. Asked and answered.

JUDGE: Sustained.

PROSECUTION #5: No further questions, Your Honor.

JUDGE: Does the prosecution have further witnesses?

PROSECUTION #5: No, Your Honor, the prosecution rests.

JUDGE: Is the defense ready to present its first witness?

DEFENSE #6: We are, Your Honor. The defense calls Jawaharlal Nehru.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

NEHRU: I do.

JUDGE: Be seated.

DEFENSE #6: Mr. Nehru, what is your occupation?

NEHRU: My name is Jawaharlal Nehru, and I am presently serving as President of the Indian National Congress Party.

DEFENSE #6: Do you know Mr. Gandhi?

NEHRU: Yes, I first met Mahatma Gandhi upon his return to India from South Africa at a meeting of the Congress in Lucknow in 1916. I have had the privilege of working closely with Gandhi since then. He is truly a pilgrim on his quest of Truth--quiet, peaceful, determined, and fearless. The leader raised up for such a time as this.

DEFENSE #6: Mr. Nehru, do you agree with Gandhi's political beliefs?

NEHRU: Mahatma Gandhi and I are working for the same end, which would be the complete

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independence of India and secession from the empire of Great Britain. I am a devoted friend and confidant, and I seek his wisdom and leadership, but at the same time i would not have you believe that Gandhi and I agree politically on everything.

DEFENSE #6: Mr. Nehru, did you accompany Mohandas Gandhi on his Salt March to Dandi?

NEHRU: No. When Gandhi told us of his plan to march to Dandi to break the Salt Laws, I was astonished that he chose salt as the symbolic beginning of the coming nonviolent revolution that would free our nation.

DEFENSE #6: Mr. Nehru, did anything happen to you after the Salt Laws were broken?

NEHRU: Yes, I was arrested, along with most of the members of the National Congress Party.

DEFENSE #6: What was the result of your arrest?

NEHRU: I was sentenced to six months on charges of sedition and breaking the Salt Laws.

DEFENSE #6: Do you know what happened to other members of the National Congress Party?

NEHRU: Yes, they all received sentences from six months to two years on the same charges for which I was sentenced.

DEFENSE #6: I have no other questions for Mr. Nehru.

JUDGE: Does the prosecution have questions for Mr. Nehru?

PROSECUTION #6: Yes, we have, Your Honor. Mr. Nehru, Mr. Gandhi told you of his plan to violate the Salt Laws, didn't he?

NEHRU: Yes, he did.

PROSECUTION # 6: Nothing further, Your Honor.

JUDGE: Thank you, Mr. Nehru, you may step down. The defense may call its next witness.

DEFENSE #7: Yes, Your Honor. The defense calls Mohandas K. Gandhi.

BAILIFF: Raise your right hand, please. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

GANDHI: I do.

JUDGE: Be seated.

DEFENSE #7: Mr. Gandhi, why did you journey to Dandi?

GANDHI: It was my opinion that, in order to throw off the evil rule of the British in India, we had to find some symbol to signal the beginning of our nonviolent revolution to free India.

DEFENSE #7: And salt was the symbol you chose?

GANDHI: Yes. The British government holds a monopoly on the production of salt. It is against the law to make or buy salt from any other source. The law also provides for taxes on all salt. As the Viceroy testified, the average Indian pays a salt tax that amounts to three days' income. The tax is unfair because salt is needed by the peasants much more than it is by the rich man. Salt is a basic necessity and to tax it is inhumane.

DEFENSE #7: Mr. Gandhi, why did you write to the Viceroy on March 2 of this year?

GANDHI: I wrote to Lord Irwin outlining the civil disobedience that I was about to undertake, and asking for an opportunity to sit down with him to talk about the problems which made it necessary to hold this march. I was hoping that Lord Irwin would see the wisdom of trying to solve our problems without my having to resort to disobedience of the laws of India. Lord Irwin refused to see me so I had to lead the march to Dandi.

DEFENSE #7: Why did you feel it necessary to resort to a campaign of non-cooperation with His Majesty's government in India after Lord Irwin's refusal to meet with you?

GANDHI: I hold the British rule in India to be a curse. I fully admit leading the campaign to spread dissatisfaction with the government and encouraging my fellow Indians to reject the system of government we have at this time. I believe that His Majesty's rule has deprived the Indian people of their inalienable rights, their freedom, and the fruits of their toil.

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PROSECUTION: Objection. This is irrelevant, and narrative. His Majesty's rule in India is not on trial here.

DEFENSE #7: Your Honor, the defense theory is that Gandhi's actions were justified. His motivations are extremely relevant to his defense.

JUDGE: Overruled. Please attempt to confine your response to the question, however, Mr. Gandhi.

DEFENSE #7: Did you believe you were justified in breaking the British laws?

GANDHI: I believe if any government deprives people of basic rights, then those people have a right to alter or abolish that government. I deliberately broke the Salt Laws; I encouraged my fellow Indians to refuse the rule of the British, and in doing these things I believe that I have fulfilled the highest duty of a good citizen. I do not ask for mercy; I expect to pay the consequences of these deliberate crimes. I also expect to draw the attention of the entire world to the injustice of His Majesty's rule in India.

DEFENSE #7: No further questions, Your Honor.

JUDGE: Does the prosecution have questions for this witness?

PROSECUTION #7: We do, Your Honor. Mr. Gandhi, did you not demand Lord Irwin reduce the land revenues, military expenditures, and government salaries, discharge all political prisoners, enforce the constitutional guarantees, and abolish the Salt Laws?

GANDHI: I did seek to negotiate with Lord Irwin on these topics. These are among the greatest evils which the British have imposed on India.

PROSECUTION #7: Mr. Gandhi, you led the so-called Salt March to Dandi, didn't you?

GANDHI: I did.

PROSECUTION #7: And you did pick up a lump of salt from the beach of Dandi on the morning of April 6, correct?

GANDHI: Yes.

PROSECUTION #7: And you did pick up other lumps of salt on other occasions between April 6 and your arrest on May 4, didn't you?

GANDHI: I did, on several occasions.

PROSECUTION #7: You did encourage your followers to break the Salt Laws, didn't you?

GANDHI: Yes.

PROSECUTION #7: No further questions.

JUDGE: Does the defense have other witnesses?

DEFENSE #7: No, Your Honor, the defense rests.

JUDGE: Does the prosecution wish to make a closing argument?

PROSECUTION #8: We do, Your Honor.

JUDGE: You may proceed.

CLOSING REMARKS BY THE PROSECUTION: Your Honor, members of the jury. This case is simply about the rule of law. The laws of British India regulate the production and gathering of salt for the benefit of the entire nation. The defendant broke these laws. Mr. Gandhi's own words in his letter to Viceroy Irwin show that he intended to break the laws. Madame Naidu, an eyewitness to the march, told you that Gandhi was indeed the person who picked up salt on the beach at Dandi. Madame Naidu admitted Gandhi planned and encouraged her to lead the assault on the Dharsana Salt Work. Sgt. Major Smythe told you how the collection of the salt taxes was brought to a virtual standstill by the act of civil disobedience planned and led by Gandhi. Gandhi himself told you he intended to break the Salt Laws to coerce and embarrass the Viceroy and His Majesty's government. Gandhi admitted leading the Salt March, admitted picking up salt at various times during the month of April, and admitted encouraging his disciples to do the same things. You need consider no other facts. If, however, other facts were needed, Mr. Nehru confirmed Gandhi intended to break the Salt Laws.

Ladies and gentlemen of the jury, the testimony of the witnesses proved that Gandhi did break the Salt Laws of British India. The testimony proved he intended to break the law, he individually broke the law, and he encouraged others to rebel against the established authority and break the law. Therefore, once the judge instructs you on the law, you will see you are duty-bound to find the defendant guilty. Ladies and gentlemen of the jury, we thank you for

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your time and effort in this case and know that you will give proper consideration to the facts and law presented to you and return a verdict of guilty.

JUDGE: Does the defense wish to make a closing argument?

DEFENSE #8: We do, Your Honor.

JUDGE: You may proceed.

DEFENSE #8: Mr. Gandhi has not denied breaking the Salt Laws and encouraging the people of India to do the same. Mohandas Gandhi has told you of his belief that there are certain "natural rights" given to mankind, not by government, but by nature. These natural rights allow each of us to preserve our lives, our liberty and our property, no matter how little. Gandhi and his followers believe their violation of the British government's unjust Salt Laws is similar to the action by patriots in the American colonies dumping tea overboard in Boston harbor to protest the British Parliament's tax on tea.

Gandhi's defense is simply that the British Indian laws are imposed upon an entire nation, unjustly, without representation of the people of India in the governmental process. The government of law which has been established by the British in India serves not the people of India, but the economic needs of the exploiter nation, Great Britain. British rule has made India more helpless than ever and subjected the Indian people to a reign of tyranny, not justice. Gandhi and his followers recognize that, in order to force Great Britain to make changes, the world community must see these injustices against the Indian people. We, therefore, ask you, ladies and gentlemen of the jury, to return a verdict of *not guilty* based upon those rights granted by a higher authority than the British government.

JUDGE: You have heard the evidence in this case. You now must decide whether the Defendant, Mohandas K. Gandhi, is guilty of illegally making salt and/or inciting to riot or sedition. Your duty is to determine the facts from all the evidence you have heard in this case. You must do your duty as jurors regardless of any personal likes or dislikes, opinions, prejudices, emotions, or sympathy. Under our system, the defendant is presumed innocent until you, the jury, are convinced of guilt beyond a reasonable doubt.

It is the prosecution's burden to prove each element of the offense beyond a reasonable doubt. If you believe the facts drawn from the testimony of their witnesses or cross-examination of the defense witnesses prove each element of the charged offenses, then you will find the defendant "guilty." If, on the other hand, you believe that the testimony of the witnesses for the defense or cross-examination of the prosecution witnesses has created a reasonable doubt with regard to any element of the alleged offenses, then you must find the defendant "not guilty." You will make a contribution to the administration of justice by arriving at a just and proper verdict. Bailiff, will you take the jury to the jury room for their deliberations.

BAILIFF: All rise. (lead jury to jury room)

BAILIFF: All rise. (upon the return of the jury)

JUDGE: Please be seated. Have you reached a verdict?

HEAD JUROR: (stand) Yes, Your Honor.

JUDGE: Please read the verdict.

HEAD JUROR: We find the defendant, Mohandas K. Gandhi, GUILTY/NOT GUILTY.

JUDGE: [If "guilty" . . . . Sentencing in this case will be on (date)]. {If "not guilty" . . . . Mr. Gandhi, you are free to go}. The court would like to thank the jury for its deliberations. This Court is adjourned (gavel).

THE END

APPENDIX #3
WHAT REALLY HAPPENED

Since this trial never took place, the dialogue has been created to reflect the facts surrounding the Salt March incident and to show how Gandhi and the other witnesses might have reacted and responded. Gandhi had been tried in 1922 on charges of sedition (inciting others to rebel against His Majesty's government through his writings). Gandhi pled guilty to these charges and asked to be given the punishment he deserved. The judge found him guilty and sentenced him to six years in prison (only two years were served because of Gandhi's poor health at the time).

The trial actually gave Gandhi a platform, or a way to call attention to his party's position, and because of that experience, Gandhi's biographers believe that the British government did not want to put Gandhi on trial again under any circumstances. So, when they were forced to arrest him after he announced the raid of the salt deposits at Dharasana, they did not want to give Gandhi a stage to gather the attention and sympathy of the rest of the world. The British government ignored their own established court system and simply imprisoned him under a 1827 law which allowed Gandhi "to suffer imprisonment during the pleasure of the government" without the benefit of trial. (This type of law is precluded in the United States by both the Fifth and Sixth Amendments to the U.S. Constitution which require, respectively, that "no man may be deprived of ...liberty ...without due process of the law" and "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury....")

There are few quotations included in the text of the trial. The material from the Gandhi letter to Lord Irwin, however, is authentic. Many of the phrases and terms used in the testimony of Nehru, Gandhi, Madame Naidu, and Lord Irwin were taken from transcripts of speeches, letters, and interviews in order to simulate the language each of these historical characters used. While Webb Miller did report the harrowing scene of the Dharasana Salt Works, there is no hard evidence that he accompanied Gandhi on his Salt March to Dandi. Several foreign correspondents made the long trek, and Webb Miller is simply representative of that group, any one of whom could have testified to Gandhi's act.

Judge C.N. Bloomfield was Gandhi's judge at his trial in 1922. All of the witnesses were real people, except for the Sgt. Major who testified to the effects of Gandhi's acts on the collection of the salt taxes. It seems logical that the collection of the salt taxes might have been the assigned tasks for one of the British officials.

Lord Irwin and Mohandas Gandhi were able to sign a pact near the end of 1930 in which the government agreed to allow the free manufacture of salt while Gandhi called off the campaign of civil disobedience which had increased following the infamous Salt March. Also, all of the "salt" prisoners were released from jail by the end of the year.

Even though Gandhi and the National Congress Party had declared January 26, 1930 to be their Independence Day, self-rule was not granted by Great Britain until August 15, 1947. Independence in 1947 resulted in the division of the former colony into two separate countries, India and Pakistan, because the Hindus and Muslims could not agree with each other. The boundaries were drawn largely along religious lines. Outbreaks of violence caused the Hindus to seek refuge in India, where the majority of the people were Hindu. The Muslims escaped from Hindu India to live in Pakistan, where the majority were Moslem. Thousands were killed in the religious rioting and warfare, much to the dismay of Gandhi and his followers.

On January 12, 1948, shortly after his 78th birthday, Gandhi began a final fast, to try to bring an end to the bloodshed between the warring religious groups. For five days he fasted and held prayer meetings in New Delhi. On January 30, he was assassinated by a Hindu fanatic. The person who had devoted his life to teaching nonviolent protest died as a result of violence. Gandhi's influence did not end with his death; many movements for civil rights and independence throughout the world, including the civil rights movement in the United States, can trace their roots to the teachings and philosophy of Mohandas K. Gandhi.

APPENDIX #4
GANDHI'S ARREST WARRANT

"Whereas the Governor in Council views with alarm the activities of Mohandas Karamchand Gandhi, he directs that the said Mohandas Karamchand Gandhi should be placed under restraint under Regulation XXV of 1827, and suffer imprisonment during the pleasure of the government, and that he be immediately removed to the Yeravda Jail."

APPENDIX #5
GANDHI'S LETTER TO LORD IRWIN
(Text compiled from edited material)

Dear Friend:

Before embarking on civil disobedience and taking the risk I have dreaded to take all these years, I would fain approach you and find a way out.

My personal faith is absolutely clear. I cannot intentionally hurt anything that lives, much less fellow human beings, even though they may do the greatest wrong to me and mine. Whilst, therefore, I hold British rule to be a curse, I do not intend harm to a single Englishman or to any legitimate interest he may have in India.

I must not be misunderstood. Though I hold the British rule in India to be a curse, I do not, therefore consider Englishmen in general to be worse than any other people on earth. I have the privilege of claiming many Englishmen as dearest friends. Indeed much that I have learnt of the evil of British rule is due to the writings of frank and courageous Englishmen who have not hesitated to tell the unpalatable truth about that rule. . .

I know that in embarking on nonviolence I shall be running what might be termed a mad risk, but the victories of truth have never been won without risks, often of the gravest character. Conversion of a nation that has consciously or unconsciously preyed upon another, far more numerous, far more ancient and no less cultured than itself, is worth any amount of risk. . .

Why? . . . It has impoverished the dumb millions by a system of progressive exploitation and by a ruinous, expensive military and civil administration which the country can never afford.

It has reduced us politically to serfdom. It has sapped the foundations of our culture. And by the policy of cruel disarmament, it has degraded us spiritually. I fear there never has been intention of granting Dominion Status to India in the immediate future.

The inequities are maintained to carry on a foreign administration, demonstrably the most expensive in the world. Take your own salary. It is over 21,000 rupees ($7,000) per month, besides many other indirect additions. You are getting over 700 rupees a day, against India's average income of less than two annas (4 cents) per day. Thus you are getting over 5,000 times India's average income. . .

On bended knee, I ask you to ponder over this phenomenon. I have taken a personal illustration to drive home a painful truth. I have too great a regard for you as a man to wish to hurt your feelings. . . But a system that provides for such an arrangement deserves to be summarily scrapped. . . Nothing but organized nonviolence can check the organized violence of the British Government.

If the Indian people join me, as I expect they will, the sufferings they will undergo, unless the British nation soon retraces its steps, will be enough to melt the stoniest hearts.

But if you cannot see your way to deal with these evils and if my letter makes no appeal to your heart on the eleventh day of this month, I shall proceed with such coworkers of the Ashram as I can take, to disregard the provisions of the Salt Laws.

This letter is not in any way intended as a threat but a simple and sacred duty, peremptory on a civil resister. Therefore, I am having it specially delivered by a young English friend who believes in the Indian cause and is a full believer in non-violence and whom Providence seems to have sent me, as it were, for the very purpose.

Your sincere friend,
M. K. Gandhi

APPENDIX #6
TEACHER RESOURCE: VOCABULARY LIST

These are some of the terms on which you will want to work with your students. Your textbook will contain most of the content terms, but a good dictionary will be a necessary supplement. Black's Law Dictionary may also be utilized for brief explanations of the trial process terms.

CONTENT TERMS

lathis
ban
ashram
dhodi
retaliation
civil disobedience
monopoly
sedition
tyranny
fast
secession
exploit
satyagraha

TRIAL PROCESS TERMS

verdict
justice
redirect
reasonable doubt
burden of proof
justification
hostile witness

APPENDIX #7
BRIEF EXPLANATION OF BRITISH LEGAL SYSTEM

Even though this trial is presented as taking place in a British courtroom according to the British legal system, the trial actually utilizes the principles and practices of the American system of justice.

Certain fundamental principles in the American system are very different from the principles of the British legal system. For example, in Britain there is no presumption of "innocent until proven guilty." The presumption of innocence until proven guilty is the foundation of many aspects of the American system, including bail and double-jeopardy.

The presumption of innocence and the prosecution's burden of proving guilt "beyond a reasonable doubt" require the prosecution be allowed to present its case first but also have the final word through the prosecution's ability to have closing argument rebuttal. The American legal system recognizes that the above presumption and burden make the prosecution's task more difficult and therefore the prosecution gets to have the first and last word in a trial. Because of the American legal system's presumption of innocence, if the prosecution does not prove its case, the defense need present no evidence at all and the prosecution is not allowed to suggest that a defendant's decision not to testify in his or her own behalf has any bearing on his or her likely guilt or innocence.

Additionally, on more minor points, in a British courtroom, all the barristers, as well as the judge, would be robed and would wear long white wigs. Further, the witness would not be allowed to sit in the witness chair, but would stand in the "dock" while responding to questions.

SKM1316

"I Have A Dream"

Martin Luther King, Jr.
Washington, D.C.
August 28, 1963

Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon of light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination.

One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize a shameful condition.

In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, which has come back marked "insufficient funds."

But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So we have come to cash this check--a check that will give us upon demand the riches of freedom and the security of justice.

We have also come to this hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children.

It would be fatal for the nation to overlook the urgency of the movement and to underestimate the determination of the Negro. This sweltering summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality. 1963 is not an end but a beginning. Those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual.

There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.

But there is something that I must say to my people who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place we must not be guilty of wrongful deeds.

Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the high plane of dignity and discipline. We

must not allow our creative protest to degenerate into physical violence. Again and again we must rise to the majestic heights of meeting physical force with soul force.

The marvelous new militancy which has engulfed the Negro community must not lead us to a distrust of all white people, for many of our white brothers, as evidenced by their presence here today, have come to realize that their destiny is tied up with our destiny and they have come to realize that their freedom is inextricably bound to our freedom. We cannot walk alone.

And as we walk, we must make the pledge that we shall always march ahead. We cannot turn back. There are those who are asking the devotees of civil rights, "When will you be satisfied?" We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality. We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and hotels of the cities. We cannot be satisfied as long as the Negro's basic mobility is from a smaller ghetto to a larger one.

We can never be satisfied as long as our children are stripped of their selfhood and robbed of their dignity by signs stating "for whites only." We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, we are not satisfied, and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream. I am not unmindful that some of you have come here out of excessive trials and tribulation. Some of you have come fresh from narrow jail cells. Some of you have come from areas where your quest for freedom left you battered by the storms of persecution and staggered by the winds of police brutality. You have been the veterans of creative suffering. Continue to work with the faith that unearned suffering is redemptive.

Go back to Mississippi; go back to Alabama; go back to South Carolina; go back to Georgia; go back to the slums and ghettos of the Northern cities, knowing that somehow this situation can, and will be changed. Let us not wallow in the valley of despair.

So I say to you, my friends, that even though we must face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream that one day this nation will rise up and live out the true meaning of its creed--we hold these truths to be self evident, that all men are created equal.

I have a dream that one day on the red hills of Georgia, sons of former slaves and sons of former slave-owners will be able to sit down together at the table of brotherhood.

I have a dream that one day, even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression will be transformed into an oasis of freedom and justice.

I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today!

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of interposition and nullification, that one day, right there in Alabama, little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers. I have a dream today!

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places shall be made plain, and the crooked places shall be made straight and the glory of the Lord will be revealed and all flesh shall see it together.

This is our hope. This is the faith that I go back to the South with.

With this faith we will be able to hew out of the mountain of despair a tone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day. This will be the day when all of God's children will be able to sing with new meaning--

"my country 'tis of thee, sweet land of liberty, of thee I sing; land where my fathers died, land of the pilgrim's pride; from every mountain side, let freedom ring"-- and if America is to be a great nation, this must become true.

And so let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York.

Let freedom ring from the heightening Alleghenies of Pennsylvania. Let freedom ring from the snow-capped Rockies of Colorado.

Let freedom ring from the curvaceous slopes of California.

But not only that.

Let freedom ring from Stone Mountain of Georgia.

Let freedom ring from Lookout Mountain of Tennessee.

Let freedom ring from every hill and molehill of Mississippi, from every mountain side, let freedom ring And when this happens, and when we allow freedom to ring, when we let it ring from every village and hamlet, from every state and city, we will be able to speed up that day when all of God's children--black men and white men, Jews and Gentiles, Catholics and Protestants--will be able to join hands and to sing in the words of the old Negro spiritual, "Free at last, free at last; thank God Almighty, we are free at last.'

About Dr. King...

The Reverend Martin Luther King, Jr. was a disciple of Mohandas Gandhi's dedication to the principle that great change can be brought about through non-violent means. He first received national attention by leading the Montgomery, Alabama bus boycott in 1955.

He delivered this speech during a peaceful march in Washington, D.C., from the steps of the Lincoln Memorial. A year later he was awarded the Nobel Peace Prize. Dr. King was assassinated in 1968.

SKR1315

Eulogy for Martin Luther King, Jr.

Robert F. Kennedy
Indianapolis, Indiana
April 4, 1968

Ladies and gentlemen, I am only going to talk to you for just a minute or so this evening, because I have some very sad news for all of you. Would you lower those signs please?

I have some very sad news for all of you, and I think -- sad news for all of our fellow citizens and people who love peace all over the world. And that is -- that Martin Luther King was shot and killed tonight.

Martin Luther King dedicated his life to love and to justice for his fellow human beings, and he died because of that effort.

In this difficult day, in this difficult time for the United States, it is perhaps well to ask what kind of a nation we are and what direction we want to move in. For those of you who are black -- considering the evidence there evidently is that there were white people who were responsible -- you can be filled with bitterness, with hatred, and a desire for revenge. We can move in that direction as a country, in great polarization -- black people amongst black, white people amongst white, filled with hatred toward one another.

Or we can make an effort, as Martin Luther King did, to understand and to comprehend, and to replace that violence, that stain of bloodshed that has spread across our land, with an effort to understand with compassion and love.

For those of you who are black and are tempted to be filled with hatred and distrust at the injustice of such an act, against all white people, I can only say that I feel in my own heart the same kind of feeling. I had a member of my family killed, but he was killed by a white man. But we have to make an effort in the United States, we have to make an effort to understand, to go beyond these rather difficult times.

What we need in the United States is not division; what we need in the United States is not hatred; what we need in the United States is not violence or lawlessness, but love and wisdom, and compassion toward one another, and a feeling of justice towards those who still suffer within our country, whether they be white or they be black....

We can do well in this country. We've had difficult times in the past. We will have difficult times in the future. It is not the end of violence; it is not the end of lawlessness; it is not the end of disorder.

But the vast majority of white people and the vast majority of black people in this country want to live together, want to improve the quality of our life, and want justice for all human beings who abide in our land.

Let us dedicate ourselves to what the Greeks wrote so many years ago: to tame the savageness of man and to make gentle the life of this world....

71509A

"Pick the Process: Examining Regionally Relevant Issues Through Negotiated Settlement, Mediation, Arbitration and Litigation."

Mary L. Schuler
Kraxberger Middle School
Gladstone Oregon

ABSTRACT
This outcome-based lesson is designed to study an issue through four legal models: negotiated settlement, mediation, arbitration and litigation. This framework may be adapted for study of various controversial issues that are regionally relevant; the Northwest timber controversy is outlined in this lesson.

OBJECTIVES
As a result of this lesson students will be able to compare and evaluate the adversarial aspects of litigation with the conciliatory aspects of the alternative dispute resolution methods of settlement, mediation, and arbitration.

AUDIENCE
The appropriate grade level is middle school through high school.

TIME REQUIRED
Fifteen 50 minute class periods. This entire lesson is designed to be reduced to individual mini lessons which would incorporate a singular conflict resolution method such as mediation.

MATERIALS NEEDED
Classroom in which students are invited to question.

DAY ONE AND TWO
Develop background of regional issue through current event discussion format.

Ask students for regional issues which concern them. Have students list issues around the room. Encourage students to discern if there is a clear pro and con position to the issue or if the issue incorporates diverse positions. Have students write pro and con under each issue and a word or picture that identifies that position. Incorporate a continuum within the classroom in which students walk to and take a stand for a position at one point of the classroom and similarly for the opposite position far from the first position. Encourage students to take median positions between the two extremes. Encourage students to state most persuasive argument from the position which they have taken and one from the opposite position.

DAY THREE
Choose one issue to develop and use as the focal point of lesson. Skeletal background of Northwest timber issue:

There is extreme paralysis within the Northwest States regarding the harvesting of timber. The keynote of the entanglement is the need to satisfy an economic framework developed over many generations based on logging timber and the need to satisfy the ecosystem balance of the natural resources. The deadlock of the parties is a result of divergent policies elicited from integral governmental bodies including the Forest Service, Bureau of Land Management and park system plus lack of comprehensive long term administrative policy. Parties include: labor factions, environmentalists, timber industry, timber families, native Americans, advocates for salmon, spotted owl and ancient forests. A friction develops between the timber industry and parties protective of ecosystems. It is this natural friction that makes this lesson parallel to regional issues throughout the U.S.

DAY FOUR AND FIVE
Use small groups to further develop background.

Divide students in four groups that singularly develop a time line incorporating news items, personal notes and photos. Each of the four groups will subsequently develop one of the four models. Relevant facts and time line of the spotted owl issue indicates the progression of the parties toward adversarial positions:

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1. From late 1800's to the present there is ongoing need for timber supply. There is an interlocking of various economic groups of the region to the harvesting of timber. Thousands of workers throughout the Northwest rely on timber harvesting for their income.

2. In 1973, Oregon listed the spotted owl as a threatened species and the Federal Government followed in 1990. There is a recognition of the interrelatedness of humans and declining species. Thousands of individuals align themselves with various protectionist positions.

3. Court injunctions are put in place when Environmental Impact Statements which require addressing threats to habitat are not prepared for logging sales. Judicial log jams are now part of the scenario.

4. In 1992, Judge Dwyer of Washington State issued permanent injunction on Forest Service sales in owl habitat until a scientifically-based plan is established.

5. President Clinton addressed the issues by calling for a meeting of involved parties in a round table format in Portland, Oregon in April, 1993. He keynoted the conference by calling for common ground, specific guiding principles and the stated persuasion to continue beyond deadlock in subsequent discussions. Judge Dwyer's requirement of scientifically-based plan may become a reality.

DAY SIX AND SEVEN
Initiate study of four legal models as student relevant.

Identify the individual groups by large cards separately labeled: negotiated settlement, mediation, arbitration and litigation. Compare student relevant issues and resolution of those issues to each process. Discuss all models/process with the entire class. Encourage students to role play student relevant examples of each process as the process is developed through discussion. Avoid teaching of specific steps and skills of each process until students have experienced the role playing of each model relevant to their lives. Tell them that they already know a great deal about most of these processes but just not by name.

Negotiated settlement: Student examples
Negotiated settlements occur each day between our peers, parents, employers and in business resolutions. Encourage students to offer scenarios of settlement that have occurred in their lives. Examples will include conflicts with parents, teachers and friends and the resolution or lack of resolution over those issues. Include examples of Congressional settlement. Work towards the concept that life constantly requires this process. Teach that the process requires skills not often taught as actually having steps. Separate the formal learning of these steps compared to the less structured negotiations that the students already use. Ask if in using this process parties may achieve a common ground of resolution of the issue. Work toward the concept that parties using this model may achieve a result where both parties win or achieve some of that which they wanted. Ask for examples. Begin to role play.

Mediation: Student relevant examples.
Mediation employs a third party who aids in the resolution of the conflict. Mediation is used in many adult conflict settings such as divorce settlements especially when children are involved. It incorporates the skills of active listening, respect for need of resolution and acknowledgement of an ongoing relationship between the parties. Stress the acknowledgment that conflict is inherently a part of the human internally, between individuals, groups and nations. Stress the naturalness of conflict. Include in the discussion the three levels of conflict found within literature and video; that is person vs. person, person vs. another and person vs. nature. Teach that in the mediation model a third person asks or is asked to be a sounding board for the other two individuals who have the conflict. Teach that in this model the third party may or may not come up with a solution that parties will adopt. Ask if in using this model/process parties may achieve or work toward common ground. Work toward the concept that both parties using this model may achieve or win some of their goals. Ask for examples and role play.

Arbitration
Arbitration is generally employed in unique dispute settings. It may be appropriately taught as the logical escalation of mediation. It may be used in labor dispute format, corporate issue resolution and for many international issues. It

may be employed where no common court is appropriate. It may be binding arbitration in which the decision of the arbitrator carries the weight of law. In arbitration the parties go through a process to pick the arbitrator. Teach that arbitration is becoming the process used to resolve consumer purchase disputes between buyer and seller. Ask if using this model may help parties to achieve a common ground. Work towards that both parties using this model may achieve some of their goals. Teach that this model/process is more akin to the judicial trial where generally one party wins. Ask for examples and role play.

Litigation
Litigation is employed when a court of law is chosen to resolve a dispute. It is certainly the most formal process to be studied. It employs procedures including how and when parties may present their side of the issue. It is the most pervasive formal structure of our judicial system. It may be discerned as adversarial in nature. Stress that the use of litigation often breaks down the interest to find a common ground, breaks down the ability to give and take on a issue and generally separates parties from having a positive future relationship. Ask why that is the case. Work towards the fact that court proceedings generally result in winners and losers. Ask for examples of trial. Students are knowledgeable of trial procedure prior to any formal teaching as a product of television and movies. Ask for examples and encourage role play.

DAY EIGHT
Use following as point of review and evaluation.

Direct students to write as titled sections: negotiated settlement, mediation, arbitration and litigation equally separated on the back and front on a piece of paper. Direct students to write in information in the form of phrases, words, sentences or pictures in those sections that they remember from the past few days. Encourage students to visualize and then draw the examples that were acted out. Direct students to state their information to someone near them. Direct students to incorporate in their lists some information that another just taught them. Encourage students to compare and exchange. Celebrate how much the students have already learned by encouraging more role playing. Act out your own examples with peers from the staff.

DAY NINE AND TEN
Develop formal steps of each process

Direct students write the titles of the four models on four papers in order to record ideas, drawings and notes on the following information.

Formal steps of Negotiated Settlement.
Resolving conflicts through the alternative dispute resolution method of negotiated settlement successfully results in both parties attaining some of that which is important to them. As developed from Harvard Negotiation Project and also through Temple-LEAP the steps include:

The parties begin by individually clarifying the problem with pre-negotiation:

1. State the parts of your position in order of importance.
2. State the parts of the other party's position as closely as you understand it in order of importance.
3. State your best alternative and worst alternative.
4. State the information that you want to protect and the information that you want to divulge.

The parties then work through the steps of negotiation with face to face negotiation. Parties follow these priorities:

1. Focus on interests of the parties not positions
2. Invent options that benefit both sides
3. Rely on objective criteria and evaluate risks
4. Achieve the best alternative to a negotiated agreement = BATNA

Focus on result in which both parties win. Find position that helps people.

Formal steps of Mediation
The alternative dispute resolution method of mediation involves a third party helping to resolve conflict through trust. It is a inexpensive, voluntary and confidential alternative to trial. It is likely for a mediator to achieve unexplored results. It is very rewarding for the mediator.

Steps of mediation as developed by Oregon Law Related Education:

1. After introductions the neutral mediator asks if parties would like to solve the problem.
2. Parties agree to ground rules: to solve the problem, not interrupt, no name calling and to tell the truth.
3. Mediator asks person #1, "What happened? How do you feel?"
4. Mediator repeats using active listening.
5. Mediator asks person #2 the same and repeats answer.
6. Mediator asks person #1,"Do you have a solution?"
7. Mediator asks person #2, "Do you agree to that solution or do you have another solution?"
8. Mediator helps parties get to solution that they both think has value.
9. Parties tell each other what they agree to.
10. Congratulations all around.

Formal steps of Arbitration
The dispute resolution method of arbitration is quasi-judicial process in which a lawsuit is resolved tentatively or finally by having arbitrator resolve issue. It is generally cheaper, faster and allows parties more flexibility than a trial. It was historically developed from labor disputes. Arbitration may be required by contract or by statute. Arbitrators may be picked from established lists and are obliged to same judicial rules as judges.

Steps and benefits of formal arbitration:

1. Parties pick impartial arbitrator; the parties themselves choose the judge.
2. The process itself is efficient and informal: no pre-trial procedures and no involved pleading or discovery. It is more comparable to hearing.
3. This process is private compared to a trial. The parties' natural feelings of confrontation may be reduced is this setting.
4. The value of a positive on-going relationship of the parties is enhanced with possibility of continued negotiation between the parties. Some arbitration is binding but most may be appealed.
5. Parties state positions and relevant information. Hearsay rules may apply.

Formal steps of litigation
Litigation is expensive economically and emotionally. It is unpredictable except that it results in a winners and losers. It is very dramatic and impressive. It is integral to our judicial fabric because judicial decisions become case-made law.

1. Jury selection known as voir dire and pre-trial motions.
2. Opening statements by plaintiff/prosecution in which summary of key facts, circumstances and parties are presented.
3. Opening statement by defense.
4. Direct examination of witness by plaintiff/prosecution. No leading questions allowed. This is referred to as the case in chief.
5. Cross examination of plaintiffs witness by defense.
6. Mid-trial motions of directed verdict in civil case by defense and in criminal matters, motion for acquittal.
7. Direct examination of witness by defense.
8. Cross examination of defense witness by plaintiff/prosecution.
9. Post-trial motions
10. Closing argument by plaintiff/prosecution.
11. Closing argument by defense.
12. Rebuttal by plaintiff
13. Jury instructions on specifics including law to be followed.
14. Jury verdict/decision of judge in bench trial.

DAY ELEVEN AND TWELVE
Individual group time to develop presentations

DAY THIRTEEN AND FOURTEEN
Class presentation time by groups.

DAY FIFTEEN
Allow time for debrief and evaluation

EVALUATION
Use concept mapping format for evaluation. Direct students to create multi-box grid with four models listed across top of paper and other areas identified on side such as: Do both parties win in this model? May this model be used in criminal as well as civil issues? Does this model allow parties to vent feelings? Does this model require an attorney? What alternative outcomes are available with this model? Compare two models using personal life issues? Compare two models using international issues?

CLOSURE
Encourage students to evaluate their own learning. Ask each group to state most persuasive reason why their process is most effective and least effective in which settings. Ask students to organize, summarize and analyze information on large sheets displayed around room with titled headings of four processes. Sheets would include pictures, words, phrases, sentences. Connecting arrows, question marks and other symbols would be included by students if encouraged. Conclude with more continuums, role playing and life examples of various models to help students integrate and retain this valuable lesson. Encourage students to imagine positive outgrowths of this lesson within themselves, peers and parents. Encourage students to imagine positive outgrowths of this lesson within their region, nation and world.

TIPS FOR TEACHER:
To further develop the teaching of negotiated settlement refer to negotiation style and most often used tacits and common mistakes as developed by D. Vanderhoof, Temple-LEAP. Refer to "Putting on Mock Trials" edited by Richard L. Roe for well developed teaching ideas for mock trial and to Betsy Coddington, Classroom Law Project, Portland, Oregon, for further work on mediation.

BIBLIOGRAPHY
I used information from the following materials:

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Coddington, Betsy, Ed., "Mediation in the Schools, Teacher Manual" Portland, OR; Classroom Law Project; Updated 1992.

Roe, Richard L., Ed., "Putting on Mock Trials" Chicago, IL: American Bar Association.

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Slow Moving Vehicle Sign Law - Religious Freedom vs. Public Safety

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ABSTRACT

This lesson is designed for use in a class studying the judicial system, the Constitution, First Amendment rights and issues focusing on religious practices and beliefs, and/or alternative dispute resolution outside of the traditional courtroom method.

The focus of the lesson is a dispute between members of the Amish community in Fillmore County, Minnesota, and the State of Minnesota over a law requiring use of an orange, reflective slow moving vehicle sign on horse-drawn buggies and wagons. The issue is about fifteen years old; the conflict has intensified over the last year. Awareness of the issue and resultant press coverage have increased. The case is presently before the Minnesota Supreme Court. No decision has been reached as of this writing.

Students will first look at the conflict from a historical viewpoint. The teacher and students will then briefly identify the conflict as seen by each side. The main activity is for students, in groups of three, to mediate the dispute and attempt to achieve resolution acceptable to both parties.

OBJECTIVES

Students will become more aware of a real-life problem involving Constitutional rights and the public safety. This will heighten general current events awareness as the issue progresses through the Minnesota Supreme Court and possibly the U.S. Supreme Court. The issue is also one very appropriate to newly licensed drivers who need to be aware of issues regarding public safety and driving.

Students will, after reading the historical information, practice main-point identification skills with help and direction from the teacher.

Students will actively participate in a mediation. This requires students to work cooperatively in a group to achieve a goal within a designated time frame. In addition to the group work skills and interactions, students will be asked to assess whether or not mediation was an appropriate way to settle this dispute. Students will be asked to forecast acceptability of their mediated solutions.

TIME TO COMPLETE

Assuming about 50-55 minute class periods, this activity will probably take one and a half to two class periods. Actual time depends on how much time the teacher wants to spend on the historical material and on the skill and background of students from doing previous mediation exercises.

The teacher should duplicate the historical summary. Then, have students read as homework in preparation for the next day's mediation activity. Students should be asked to be prepared to identify the issues and the progression of the conflict. OR

Teacher duplicates. Students read in class as a group with teacher pointing out important points. This could be done the last half of a class on the day preceding the mediation activity. Teacher and students would identify issues and the progression of the conflict. OR

Assign students to groups of three and have groups read the article together. Teacher would make the group responsible for making sure all members understand the issues and the progression of the conflict. This could be done the last half of class on the day preceding the mediation activity.

The day of the mediation, for about 5-10 minutes, the teacher and students should identify the issues for the State of Minnesota and for the Amish community members who do not wish to display the slow moving vehicle

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sign. This is NOT the time to debate. It is an opportunity to clarify the dispute for students and for the teacher to answer any questions. It is recommended that this information be recorded on the board, transparency, or on pieces of bulletin board paper (butcher rolls about 3 feet wide by 5 or 6 feet long, one per class hour) strung along an available wall or blackboard.

Teacher then divides students into groups of three for the mediation. Mediation will probably take 15-30 minutes, depending on time available. Teacher should set short time period first and then extend if needed. Best guess of time is about 20 minutes.

10-20 minutes should be left at the end of the class period to debrief with students.

MATERIALS NEEDED

Handout (one per student) of historical information on the conflict

Blackboard space and chalk or butcher roll paper and wide line magic markers and masking tape or transparencies and transparency pens and overhead projector

Room for students to form groups of three--moveable furniture

INTRODUCTION

This depends on the focus of the course and present unit of study. It would seem appropriate to relate it to First Amendment rights, the need for public safety, timeliness of the issue, identified local or state concern about the issue, and the opportunity to use mediation or alternative dispute resolution to attempt to settle the problem. Students tend to be very "personal rights" oriented-this could also be a focus with the teacher drawing attention to the need to respect the rights of a religious minority in the least restrictive manner which still maintains the safety of the community.

PROCEDURE

Teacher distributes the handout and determines best method for students to learn needed information. Teacher and students then identify issues/viewpoints for the State of Minnesota and for the Amish who do not wish to display the slow moving vehicle sign. This is not the time to debate.

Students are put into groups of three. One student assumes the role of mediator. A second student assumes the role of an Amish person who feels his/her religious beliefs prohibit him/her from displaying the slow moving vehicle sign. The third student takes on the role of the State of Minnesota which says a black and white reflective sign must be displayed during the day and an orange reflective sign must be displayed at night or in conditions of poor visibility.

Mediation proceeds (See separate attachment for basic information about how to do a mediation session). Steps in the mediation process are repeated until a solution is reached, is determined to be absolutely impossible to reach, or time runs out.

As settlements are reached, groups should write down the provisions of their settlements for comparison later with other groups. Students should also write down why/how they reached their particular agreement. Groups who finish much ahead of other groups might be silent observers of other mediations.

DEBRIEF

Teacher should have each group explain its settlement and how/why it was reached. Teacher should write down on board, transparency, or lengths of butcher paper, the students' mediated solutions. This provides a cue for the non-auditory learner. Written form helps the more visual learner. If the teacher has students who learn best by physically doing, these students (instead of the teacher) can act as scribes.

Differences between settlements should be discussed. If some groups were unable to achieve settlement, barriers to settlement should also be noted.

Teacher and students should also discuss the use of mediation for this case. Was it an appropriate way to reach resolution? Would a court decision be more effective? More binding? Under which method would each party be more likely to achieve its goals? Which method (court or mediation) would seem more "fair" to the

community? Were the decisions reached by mediation likely to be acceptable to both the Amish and non-Amish communities in the county?

Students should be given an opportunity, by hand vote, to side with either the Amish or the State of Minnesota It would be appropriate to allow students an opportunity to express the reasons for their viewpoint. Teacher can raise issues appropriate to the case and students' course of study. Students could also speculate on the pending Minnesota Supreme Count decision.

EVALUATION

Teacher could assign students to write 1-2 pages explaining how they think this dispute should be settled, including supporting reasons for the position taken. Or, in a short verbal or written quiz or debrief the next day, the teacher could have students summarize points for both sides and the Constitutional issues involved. The teacher could also focus evaluation on the mediation process--what were the things that went smoothly and what things need work or improvement for the mediation process to work.

Student Handouts

Attached and labeled: SLOW MOVING VEHICLE SIGN LAW RELIGIOUS FREEDOM VS. PUBLIC SAFETY

RESOURCES

Information for this project was adapted from news reports appearing in Minneapolis/St. Paul newspapers. The papers, titles, and dates are included for teacher reference.

Star Tribune, July 12, 1988 "Jailed Amish man keeps orange off his buggy and off his back" by: Bill McAuliffe

St. Paul Pioneer Press Dispatch, July 17, 1988 "Conflict over buggy signs splits Amish community" by Ellen Tomson

Star Tribune, August 9, 1988 "Judge orders Amish man to do community service work" by Pat Doyle

Star Tribune, August 18, 1988 "Michigan judge rules for Amish in fight over signs on buggies" by Bill McAuliffe

Star Tribune, October 26, 1988 "Amish hire lawyer to fight state law requiring orange signs on buggies" by Bill McAuliffe

Star Tribune, October 27, 1988 "Religious freedom vs. public safety argued in Amish buggy-sign case" by Bill McAuliffe

Star Tribune, December 20, 1988 "Judge rules that sign law applies to Amish" "He says opposition isn't sincere enough" by Bill McAuliffe

Star Tribune, December 26, 1988 "Uneasy neighbors" "Amish aid-and irritate-community" by Bill McAuliffe

St. Paul Pioneer Press Dispatch, January 1,1989 Civil Liberties Union sides with court in Amish case" by Anne Brataas

Star Tribune, February 9, 1989 "17 Amish line up to serve time for slow-moving-sign violations" by Bill McAuliffe

Star Tribune, March 10, 1989 "Committee kills bill on Amish buggies" by Robert Whereatt

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SLOW MOVING VEHICLE SIGN LAW
RELIGIOUS FREEDOM VS. PUBLIC SAFETY

HISTORY OF THE CONFLICT

Amish families from Ohio began to arrive in Fillmore County, Minnesota, in 1973-1974. Initially, there were few problems with the law requiring an orange slow moving vehicle sign on buggies and wagons. Younger Amish, conscious of their position as newcomers and anxious to fit into their new community, tended to use the familiar orange triangle. Some Amish preferred a black triangle with a white outline. Older, more conservative Amish, did not use any sign. Instead, they outlined their buggies with reflective tape. If stopped and tagged, Amish drivers usually pled not guilty. Routinely, they were found guilty and then paid the assessed fines.

There were sporadic conflicts over the sign law. Some non-Amish people in the area pointed to public safety concerns and occasional accidents involving slow moving vehicles as reasons Amish drivers should display the orange sign. At the same time, the non-Amish community recognized the Amish community was responsible for a significant increase in tourism to the area. Many feared that enforcing the sign law too rigidly would make the Amish move away. This would result in a financial loss for the entire area.

The Amish community did not have a united viewpoint. Some believed that they should be exempt from using the orange sign, citing religious freedom guaranteed by the Constitution. This group said they felt safe without the orange sign but were generally willing to outline vehicles with reflective tape. Other Amish continued to use the modified, black and white, form of the sign. Still others complied with the law and displayed an orange triangle.

In 1986, a new law was passed allowing for a black triangle with a white outline. The Minnesota Highway Patrol felt strongly that, regardless of color, there must be a sign. Many Amish began to comply. Others continued to refuse comply and continued to outline their vehicles with reflective tape.

The state of Minnesota amended the law one year later. The amended law required slow moving vehicles to carry the orange triangle in wagons and buggies. The orange sign was to be used at night or in conditions of poor visibility. Many Amish refused to carry the orange triangle. Amish buggy and wagon drivers began to be ticketed, fined, and/or sentenced to community service or jail time for non-compliance. Initial fines were in the $20-22 range and first jail sentences were often for 7 days. Sentences were often stayed if there were no additional tags within 6 months. Soon, repeat offenders began to appear back in court within the 6 month period. They began to refuse to pay assessed fines.

As repeat offenders began to reappear in court, judges seemed less willing to accept religious freedom as a defense. Until the fall of 1988, the Amish did not hire attorneys to defend themselves. Instead, they tended to accept the guilty verdict of the court, but continued to defy state law. As Amish men began to refuse to pay fines and were then sentenced to community service or jail time, newspapers and other media in the state began covering the issue.

Articles and reports described how other states had handled the same problem. For example, Ohio and Kentucky allowed the use of reflective tape. Pennsylvania required an orange reflective sign with flashing red lights on the back of the vehicle and flashing orange lights on the front. A Michigan court ruled the Amish did not have to display the sign, citing the willingness of the Amish to outline with reflective tape. It appeared that Minnesota was the only state actively prosecuting Amish drivers for non-compliance.

In October, 1988, the Amish hired an attorney to defend their rights in court. 14 people were accused of failing to use any sign on their wagons or buggies or for using the black and white reflective sign after sundown instead of the orange sign required by law. They cited religious-based opposition to using the orange triangular slow moving vehicle sign. The Amish wanted to practice their religion without interference from government. The bright color of the sign was opposed. The sign itself was resisted--the Amish said they preferred to trust God over worldly symbols.

The Amish believed that enforcement of the law, when there was a less restrictive alternative of outlining the buggy with reflective tape, was a violation of religious freedom.

The opposition said free exercise of religion was not an absolute right. It was also suggested that significant disagreement within the Amish community regarding compliance with the law weakened the Amish's religious grounds argument. The opposition declared that highway safety was the higher concern. It was also pointed out that the Amish did use bright colors such as red for barns and orange for hunting clothes. This seemed to be an attempt to discount Amish opposition to the color of the orange sign. Amish opposition to the orange triangular sign was not considered sincere or united enough to warrant freedom from the state law.

A case often cited during this conflict was *Wisconsin v. Yoder* (1972) in which the US Supreme Court ruled that Amish parents do not have to formally educate their children beyond 8th grade and that to force them to do so endangers free exercise of religion. The point of law considered in this case is that government has to prove, that where laws conflict with religious beliefs, that the state has a compelling interest in carrying out such laws and that no less restrictive alternative exists.

In December, 1988, a Fillmore County district judge gave his decision in the case of 14 Amish who were ticketed for violating the sign law. The judge pointed out that the Amish were divided on whether or not their religion prohibits display of the sign. It did not appear to the judge that the religious belief against the use of the sign was sincere. In addition, the judge felt that highway safety concerns were more important considerations. Therefore, at least at night, Amish must comply with the law and display the orange triangle. After the judge's decision was made public, an appeal was filed with the Minnesota Court of Appeals. The Court of Appeals reviewed the case and referred it, because of its importance, to the Minnesota Supreme Court. The case will begin being heard on June 1, 1989.

At the State Supreme Court level, it would seem that the state will argue that the display of the orange sign at night or in poor visibility and the display of the black and white reflective sign at other times was the least restrictive alternative for protecting public safety. In addition, the state would likely point to conflict within the Amish community over use of the sign; thus, challenging refusal to use the sign on a free exercise of religion basis.

The Amish, at the State Supreme Court level, will be likely to argue that within all religions, there is variety of belief and that those whose religious beliefs put them in opposition to displaying the sign, should be exempt from having to use it. Further, the Amish would point to willingness to outline buggies and wagons with reflective tape as a less restrictive alternative, acceptable to the most conservative Amish. In addition, the Amish would likely quote an August, 1988, Michigan Court of Appeals decision, that Amish religious beliefs and willingness to outline buggies with reflective tape exempted the Amish from displaying the orange sign.

As of this writing, the Minnesota State Supreme Court has not started to hear this case. How do you think the Court will rule on this challenge to Minnesota state law and what will be the Constitutional issues involved?

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SLOW MOVING VEHICLE SIGN LAW
RELIGIOUS FREEDOM VS. PUBLIC SAFETY

Mediation Set-up Guidelines

1. Teacher puts students in groups of three. Each group has a mediator and two disputants. The mediator does not make a decision in the dispute. The mediator's job is to help the two disputants reach an agreement, outside of a courtroom setting.

2. Mediator explains that the purpose of mediation is for the two parties to make their own agreement. Disputants must not interrupt each other--each will receive a turn to talk. The mediator may speak to disputants separately if needed.

3. Mediator asks each party to describe or define the problem as he/she sees it. Each party may also express feelings about the problem or dispute.

4. The mediator restates the views of each party. The mediator may also ask questions to clarify issues or unclear statements.

5. The mediator asks one of the parties if he/she has a proposed solution to the identified problem. After the first party outlines a proposed solution, the mediator asks the second party if he/she agrees to the first party's proposed solution. If the second party cannot agree to the proposed solution, the mediator asks the second party for his/her proposed solution. The mediator then asks the first party if he/she can agree to the second party's proposed solution.

6. If there is agreement at any point, the mediator restates the agreement to make sure both disputants approve and understand the agreement in the same way.

If no agreement is reached, the mediator talks to each disputant separately, asking how he/she is willing to solve the problem. This is an effort to determine the "bottom line" of each disputant. The mediator then brings the parties back together and again, in turn, asks each party to offer a proposed solution to the other party for approval. The mediator will repeat the process of speaking individually with each party and then bringing them together to try to resolve the conflict.

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The Good Samaritan and the Law

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INTRODUCTION

There is often the conflict in society between doing what one feels is ethical in a situation as opposed to what is the legal obligation. An individual who sees a stranger in need of emergency aid may be confronted with that dilemma. In these lessons students examine some of the reasons why good Samaritans are a vanishing breed in our society. They examine and clarify their own values in this regard. In addition, they examine the "good Samaritan" law in Maryland and have an opportunity to evaluate and suggest changes in the law consistent with their views and values.

AUDIENCE

This activity is designed for a senior high class in government, contemporary issues, philosophy or ethics and wherever value clarification is relevant.

TIME TO COMPLETE

The activity may go for two class periods.

GOALS

As a result of this lesson, students will:

- recognize the moral dilemmas and conflict confronting an individual in a situation where a total stranger requires his emergency aid or assistance.
- understand some of the explanations as to why Americans have been considered cruelly indifferent to the cries for help from strangers
- describe Maryland's Good Samaritan Law, evaluate the law and rewrite/change the law.

MATERIALS

Handout: "Are Good Samaritans a Vanishing Breed?", U.S. News and World Report, November 14, 1983 (and questions)

Handout: Maryland's Good Samaritan Law (excerpts from the Annotated Code of Maryland)

PROCEDURES

1. The teacher can ask students to relate personal experiences in which they needed emergency aid or assistance from a stranger or in which they were a good Samaritan or confronted by the opportunity to be one. What did they do? What values were in conflict? What went through their mind at the time of the event? later?

2. Before reading the US News and World Report article ask students to suggest reasons why Americans often seem unwilling to aid or rescue fellow citizens in need. Recall the famous Kitty Genovese case in New York City that is mentioned in the article.

3. Read the article "Are Good Samaritans a Vanishing Breed?" Answer the questions relating to the reasons that Americans seem "cruelly indifferent to the woes of others." Discuss some of the changes that states are making requiring onlookers to provide help. Hopefully, this will pique their interest and they will inquire about Maryland's law in this area.

4. Students can work in small groups to write a Good Samaritan Law. Write on the board the titles: "witness aiding assaulted person" and "emergency medical care" to get them started. After the groups have written their laws and reported hand out the Maryland law and compare it to their laws. An alternative approach is to review the Maryland law and then suggest changes as a class or in small groups. The ability level of the class may determine which approach is used. It is important to clarify unfamiliar vocabulary in the law before evaluating it.

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EVALUATION

The writing of a Good Samaritan Law or the rewriting of Maryland's law is a good evaluative exercise. Students will clarify their values in this area and it is interesting to see how far they go in their laws to force onlookers to provide help. This can provoke some lively discussion. In addition, students could survey their peers and/or teachers and other adults about their views in this area.

"Are Good Samaritans a Vanishing Breed?"
(Source: US News and World Report November 14, 1983)

1. What is meant by a good samaritan?

2. Give possible explanations why good samaritans are hard to find and "people tend not to get involved".

3. When are people more likely to give assistance?

4. What have some states done to get others to help those in need of assistance? What is your view of these laws?

5. Do you know the law in Maryland? What do you think it should be? Do you think a citizen should be legally bound to help another whom he observes in trouble? Explain your answer.

Good Samaritan Law -- Maryland
(Source: Annotated Code of Maryland - (some sections are paraphrased)

12A. Witness aiding assaulted person

Any person witnessing a violent assault upon the person of another may lawfully aid the person being assaulted by assisting in that person's defense. The force exerted upon the attacker or attackers by the person witnessing the assault may be that degree of force which the assaulted person is allowed to assert in defending himself. (1965, ch. 263.)

Assistance not required -- Although this section and article 43, 132, afford protection to one who assists another in certain circumstances, these sections impose no requirement that assistance be rendered. Pope v. State, 284 Md. 309, 396 A.2d 1054 (1979).

5-309. Emergency Medical Care.

Immunity for special personnel - A person described below in this section is not civilly liable for any act or omission in giving any assistance or medical care, if: 1) the act or omission is not one of gross negligence; 2) the assistance or medical care is provided without fee or other compensation; and 3) the assistance or medical care is provided: 1) at the scene of an emergency; 2) in transit to a medical facility; or 3) through communications with personnel providing emergency assistance.

Individual licensed by this State to provide medical care
OR
member of any State, county, municipal or volunteer fire department, ambulance and rescue squad or law enforcement agency or of the National Ski Patrol System, or a corporate fire department
IF
the member has completed an American Red Cross course in advanced first aid or equivalent; certified by this State as an emergency medical technician, cardiac rescue technician, or emergency medical technician-paramedic

Immunity for other individuals -- An individual who is not covered otherwise by this section is not civilly liable for any act or omission in providing assistance or medical aid to a victim at the scene of an emergency, if 1) the assistance is provided in a reasonably prudent manner; 2) the -assistance or aid is provided without fee or other compensation; 3) the individual relinquishes care of the victim when someone who is licensed by this State to provide medical care becomes available to take responsibility. (1982)

Are Good Samaritans A Vanishing Breed?

Time and again, people are ignoring cries for help. Yet heroes can still be found—if you look hard enough.

Sur Williams, 11, reported a rape in this St. Louis park while adults took no action.

Eleven-year-old Sur Williams won national acclaim last summer when he called police after seeing a girl being raped in a St. Louis park—while two dozen adult onlookers did nothing.

What focused such attention on that incident—and prompted awards and a scholarship fund for the youth—was the message the episode conveyed: Good Samaritans nowadays are hard to find.

Nearly two decades after 38 persons ignored repeated screams by a woman named Kitty Genovese and failed to prevent her murder on a New York City street, many still balk at coming to the rescue of fellow citizens.

"People tend not to get involved," declares psychologist Harold Takooshian of Fordham University, who has studied bystander reaction to crimes and accidents. In recent episodes:

- Salesman Ralph Hardy was kidnapped from his own car in San Francisco, but onlookers refused to help or to call police.
- Congressional aide Joanne Siembida was robbed in a New York City hotel elevator, but no one assisted her as she shouted for help while chasing the assailant through the lobby.
- Police Chief Charles Johnston of Lakewood, Colo., was bitten by a rattlesnake while jogging, but 50 motorists disregarded his frantic waving as they drove by.
- Kenneth Von of Los Angeles was jeered as he tried to save a pregnant woman who was injured in an auto crash near his office.

At first blush, these incidents suggest that Americans are cruelly indifferent to the woes of others. But experts cite reasons—some of them valid—for this behavior.

Some authorities blame the lack of concern on an increasingly impersonal U.S. society. "When our nation was smaller 50 years ago, people had more community feeling and helped others in need much more readily than they do today," observes psychologist Bertram Raven of the University of California at Los Angeles. "As we have clustered in large cities, there has been a shift in responsibility. People pay their taxes and figure it's up to the government to help."

Bias among residents of a region also may come into play. Remarks Harry Chapman, Denver Police psychologist: "Some might say of a victim, 'She's a black woman. She is no business of ours and doesn't belong up here, anyway.' "

Others who might be expected to help fear for their own safety. Take the case of Michael Mason, 23, shot in the side after he went to the aid of a 60-year-old Los Angeles woman who was being attacked by two robbers in a grocery-store parking lot. The woman's insurance firm eventually paid much of Mason's $8,000 medical bill, but he admits: "I don't know if I'd do it again."

Another who found providing help to be painful is John Ayer of Miami, who led 19-year-old Angela Vivier to safety when her car—stalled after an accident—was surrounded by 20 boisterous men. Ayer suffered a broken jaw and lost several teeth in the melee.

Helping a woman escape from a Miami mob cost John Ayer a broken jaw and several teeth.

Among other examples, Oklahoma teacher Ronnie Darden lost his left leg and part of his right foot when he tripped over a power line while attempting to help passengers in a car that had crashed. Joe Delaney, a star halfback for the Kansas City Chiefs, died last June while trying to rescue three drowning boys in Louisiana.

Harsh reaction. Being a Good Samaritan also can prompt violent retribution. When a family in the Watts section of Los Angeles broke up a gang robbery of a woman and five girls—killing one attacker in the process—the gang riddled the family's home and grocery store with bullets.

Many spectators shy away from helping because they aren't sure they're seeing a crime or a true emergency. Psychologist Takooshian staged hundreds of auto break-ins on public streets and found that fewer than 5 percent of passers-by challenged the "thief," often saying that they didn't know whether he owned the vehicle. "If the situation is ambiguous, people may not take action," says Takooshian.

Others fear that they will be held responsible if they try to help and something goes wrong. Such concerns persist despite so-called Good Samaritan laws enacted in every state to exempt from legal liability persons who aid strangers in emergencies. 15 of the statutes, however, apply only to doctors or other professionals.

Crowd psychology [illegible]

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large numbers gather at the site of a crime or injury, onlookers often assume that someone has called authorities. Yet, it often turns out that no one has done so. Says Norman Dinerman, chief of Denver's ambulance division: "A person is more likely to assist those who are already intervening than to initiate anything. It's like moths being attracted to a flame."

Rescue of air crash victim made Lenny Skutnik a hero.

Similarly, if members of a group turn to lawbreaking and encourage others to join in, those who don't participate usually are reluctant to call police. That was the case in a New Bedford, Mass., bar last winter when four men raped a woman while others helped to hold her down on top of a pool table. No one notified police, apparently for fear of retribution from the assailants.

Fair-weather friends. When people do help, studies show it is more likely to be in rural areas and in good weather. They also are more apt to lend a hand in places where such heroic efforts have made a difference. In a recent Chicago incident, a construction worker chased a teenage boy who had snatched a purse from a woman, then was appalled when the lady refused to prosecute the thief. "I risked my life, and now you're not going to press charges?" he asked.

Even so, the willingness to help, regardless of the consequences, is still alive. In Washington, D.C., Capitol Hill aide Lenny Skutnik became an instant national hero when he plunged into the icy Potomac River in January, 1982, to save a woman who had survived an airline crash.

Indiana construction worker George Winkleman received a presidential medal of honor for rescuing a truck-driver from his burning rig on an interstate highway last year.

Other Good Samaritans are less heralded. Tony Patch was driving past a San Francisco bank in August when he noticed a man carrying a bag that exploded and covered him with red dye used by banks to identify robbers. Patch gave chase, caught the man and kept him at bay by brandishing a can of Mace until police arrived. "I couldn't let the guy run away," Patch explains.

Pitching in. Two recent New Orleans incidents caught public attention: A cabdriver helped catch a purse snatcher—and was shot in the process—and a Naval Reserve captain tackled a man who was robbing two women. "People here tend to get involved," says Gabriel Rodriguez, a New Orleans Police Department psychologist.

Officials and businessmen in some cities have set up campaigns to recognize such deeds. The *Dallas Morning News* and a jewelry store have teamed up to present a monthly award to a citizen who has come to someone's aid. "We want to make the public aware that there are people who care," says the newspaper's Pat Vaughan. One winner: A 9-year-old boy who helped identify a man who had kidnapped and raped a young girl.

In Minneapolis, Police Chief Tony Bouza reports that his department presented awards to five "citizen heroes" in one recent month alone.

Not satisfied to leave emergency aid solely to the vagaries of human nature, three states have passed laws requiring onlookers to provide help. Vermont's statute, which carries a maximum $100 fine, says that a citizen must assist someone in trouble if it can be done "without danger or peril to himself or without interference with important duties owed to others." The law has never been enforced because there have been few cases in which prosecutors could establish that a bystander should have helped but didn't.

Still, Minnesota legislators this year enacted a law compelling offers of "reasonable assistance" in emergencies. Says Randy Staten, the measure's sponsor: "We are our brothers' and sisters' keepers, and if we need a law to make people realize it, fine."

Other states are studying the idea, but some experts wonder if such measures would do much good. St. Louis Police Capt. John Carnaghi asks: "What is 'reasonable assistance'? If you're 6 feet 4 and weigh 250 pounds, maybe you can help. But what if you're 5 feet tall and 65 years old with a heart condition?"

Rhode Island legislators, reacting to the barroom rape in nearby Massachusetts, voted this year to impose a maximum $500 fine on persons who fail to help victims of serious sexual assaults.

New safeguards. Ohio lawmakers took a different approach when they approved a law that provides up to $25,000 for those injured while trying to help crime victims and for relatives of persons who died while attempting to thwart a crime. Yet only a few claims have been made in the eight years the law has been on the books.

Another tack being taken on behalf of victims is the filing of lawsuits against businesses that don't help them. In one such case, a California court ruled this year that a bar owner could be held liable for refusing use of a public telephone to a man who wanted to notify police about a fight in which another man later was killed.

The federal government is acting, too. The Public Health Service has created a unit to study what Surgeon General C. Everett Koop calls "patterns of action and reaction" of crime witnesses.

Despite such steps, skeptics say, the dangers and other considerations will still make many Americans think twice before answering a call for help. □

Women protest Massachusetts barroom rape. Customers did nothing to stop assault.

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70862A/901698

Getting What You Want Out of a Conflict

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ABSTRACT
This lesson involves students experiencing several types of conflict resolution techniques in a simulation setting.

RATIONALE
This lesson is used as a part of a unit on conflict resolution techniques; students must already be generally familiar with those techniques.

GOALS
The goals of this lesson are to:

- Examine the spectrum of conflict resolution techniques available in any conflict situation;
- Through simulation assist the students in understanding the characteristics of the various techniques;
- Assist the students in developing the skills of simulation and brainstorming.

GRADE LEVEL
This lesson is appropriate for senior level classes in Civics, American Federal Government, or a course focusing on the Constitution.

TIME TO COMPLETE
This lesson should be scheduled for approximately two normal academic periods.

MATERIALS
Only those required for the simulation; see below.

PROCEDURES

a. Simulation (The 1-2-3-4 Game). Note that this should be done at the start of the first period without introduction of its relationship to the rest of the class.

(1) Divide the class into sets of four players and one observer; odd numbers serve as floating observers.

(2) Purpose of the game is to amass as many points as possible in four rounds worth 100 points each. Maximum score for each individual is 400 points. Each set of four players plays independently but an overall winner in the class will be identified.

Note: If possible have some tangible reward for the winners, such as cookies or drinks; this makes the competition more realistic.

(3) Procedure is for the observer in each set of players to shuffle four cards together. On each card are written on one side the numbers 1, 2, 3 or 4. The cards are dealt at a signal from the teacher to the four players. The objective of the game is to combine with other players to form a sum of 6 (2 plus 4, 1 plus 2 plus 3) or 7 (1 plus 2 plus 4, 3 plus 4). As players decide how to combine to form 6 or 7 they must also agree how to divide the 100 points available per round. Students have one minute to agree how to form 6 or 7 and how to divide the 100 points. As soon as there is any agreement and the involved students shake hands, the negotiations for that set of players is over for that round. If no agreement is reached in one minute, all players in that set receive no points for that round. A total of four rounds are played and the player with the highest point total wins.

Note: It is advisable to play a demonstration round to make sure everyone understands the rules and objective.

b. Role of observers. The observers deal the cards and keep the score for each round and for the total scores. They are also secretly briefed by the teacher to observe the reaction of the students as they see which numbered cards they receive in each round. Special attention should be paid to those receiving a "1" and "4". Observers should be prepared to comment on the reaction of the players after the game is completed.

c. After playing the game list on the board some of the main conflict resolution techniques, such as:

Consensus
Mediation
Arbitration
Adjudication
Civil disobedience
Violence (not really a resolution technique)

d. Ask the students to define and give a hypothetical example of each one in practice. Make sure they are specific; it might help to use historical examples to be sure of their understanding.

e. For homework ask the students to describe the type of conflict resolution technique used in the simulation game and the benefits and problems of this type of resolution. This is the end of the first of two periods.

f. At the start of the next period, ask the students what sort of technique was used in the first simulation. Then tell them they are going to play the game again with slightly different rules.

g. Select a four student set of players and ask them to play the game again, but this time they must all agree to the solution (consensus). There should still be some reward, but not something easily divisible by four.

h. After the simulation, discuss the differences in this technique -- cooperation, takes more time, everyone reasonably happy, etc.

i. Repeat again, with another technique such as arbitration. Be sure to again discuss the characteristics and requirements of this technique.

j. Repeat as many times as desired. No need to use civil disobedience (although it might be interesting to discuss what could be done along those lines in this setting) or violence.

k. As homework ask the students to write a description of the salient characteristics of the various types of conflict resolution techniques used in this simulation and the problems with and benefits of each.

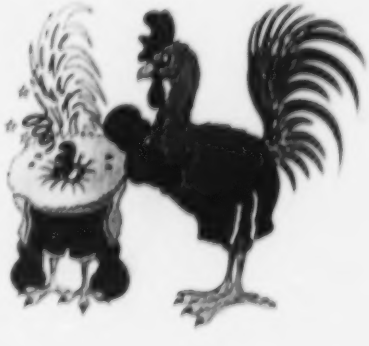
DEBRIEFING
Included in the homework, simulations and discussions.

EVALUATION
Included in last homework.

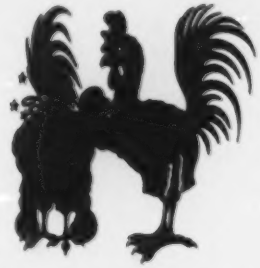
TIPS FROM THE TEACHER

a. If a stage were available, it might add to the class. Also, a video camera to record the plays might allow for review of particularly critical moments.

b. Be sure to point out the reactions of those who are powerless (number 1) and those who are mightily empowered (number 4) during the simulations.



OBSERVER'S TALLY SHEET: INDIVIDUAL SCORES



NAME/S OF OBSERVER/S FOR THIS GROUP: _____

(Note -- Observers must serve as observers for all four rounds.)

Shuffle the four cards and, at a signal from the session leader, deal each of the four numbered cards to the players in your group. (There must be four players in each group.) Players must work with other members of their group to combine numbers to equal either 6 or 7, i.e., the player with card 4 joins forces with the player holding card 3 = total of 7. The players that reach an agreement to team up, arriving at a total of either 6 or 7, with an agreement as to how to divide up the winning points (100), win that round. They can divide the 100 points equally or not, as they agree. Students have two minutes to agree how to form a 6 or 7 and how to divide the 100 points. As soon as there is any agreement and the involved students shake hands, the round is over for that group. Enter the agreed upon points for those individuals in the spaces on this tally sheet. If no agreement is reached in two minutes, all players in that group receive zero (0) points for that round. A total of four rounds are played. Reshuffle and, at the session leader's signal, deal the cards again for the next round. (Observe the players' reactions as they receive their cards.) At the end of four rounds, the player in the entire class with the highest point total wins. Possible combinations: 4+3=7 4+2=6 4+2+1=7 3+2+1=6

	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:
ROUND 1				
ROUND 2				
ROUND 3				
ROUND 4				
Total Scores				

Maximum score for each individual is 400 points.

OBSERVER'S TALLY SHEET: INDIVIDUAL SCORES -- MEDIATION & ARBITRATION STRATEGIES

NAME/S OF OBSERVER/S FOR THIS GROUP: _____

MEDIATION STRATEGY

Shuffle the four cards and, at a signal from the session leader, deal each of the four numbered cards to the players in your group. (There must be four players in each group.) Players must work with other members of their group to combine numbers to equal either 6 or 7, i.e., the player with card 4 joins forces with the player holding card 3 = total of 7, and then divide 100 points among them. **After one minute of discussing the possibilities, the players then explain to the observer why they wish to team up in this way. All players in the group may argue why they think this is a good or bad way to resolve the situation. The observer will then suggest a solution that is favorable to most, and possibly all, of the players. After five minutes, the players must decide if they wish to follow the observer's suggestion.** Enter the agreed upon points for those individuals in the spaces on this tally sheet. If no agreement is reached, all players in that group receive zero (0) points.

Possible combinations: 4 + 3 = 7 4 + 2 = 6 4 + 2 + 1 = 7 3 + 2 + 1 = 6

	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:
SCORES				

ARBITRATION STRATEGY

After one minute of discussing the possibilities, the players then explain to the observer why they wish to team up in this way. All players in the group may argue why they think this is a good or bad way to resolve the situation. The observer will then **decide upon** a solution that is favorable to most, and possibly all, of the players. The round is then over for that group. Enter the points the mediator decided upon for those individuals in the spaces on this tally sheet. If no agreement is reached in seven minutes, all players in that group receive zero (0) points for that round.

Possible combinations: 4 + 3 = 7 4 + 2 = 6 4 + 2 + 1 = 7 3 + 2 + 1 = 6

	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:	NAME/PLAYER:
SCORES	71			72

Hostage Crisis

Emmett Lockett
Holmes High School
San Antonio, Texas

HOSTAGE CRISIS SCENARIO DAY 1

A merchant vessel, the U.S.S. Nixon, flying the American flag is hijacked in international waters off the coast of Brazil. Aboard are twenty-seven American merchant seaman. The hijackers, five Sandanista rebels claiming to be working for the government of Nicaragua, sail the ship toward port in Cuba.

In a radio announcement the Nicaraguan government denies any involvement in this incident but agrees with the cause of the hijackers. Since your government has broken diplomatic relations with Nicaragua you must relay all communications through the government of Grenada, your good ally in the region.

The Hijackers' Demands are as Follows:

1. The removal of all U.S. troops from Honduras.

2. The end of military and economic aid of the "contra's" forces fighting against the sovereign Nicaraguan government.

3. The removal of all U.S. military forces stationed in Guantanamo naval base, Cuba.

If these demands are not met within 24 hours, the hijackers will begin killing hostages one at a time, every hour on the hour.

As president you must:

1. Develop a communication to send to the hijackers.

2. Develop two plans to be followed by the U.S. to end this crisis.

Options

military

1. Air attack
2. Blockade
3. Land invasion
4. Naval bombardment
5. Ultimatum as a prelude
6. Commando raid
7. Nuclear attack
8. CIA infiltration in support of counter revolt

diplomatic

1. Negotiate
2. Concession
3. Unilateral pressure
4. Bilateral pressure
5. Partial concession
6. Economic bribe
7. Break relations with nicaragua

political

1. Alter world opinion
2. Offer no military aid
3. Depose current leader

HOSTAGE CRISIS SIMULATION DAY 2

The hijackers have just relayed the following message through the American embassy in Grenada:

It is our intention to begin killing hostages on the next even hour as our demands have not been met.

Sincerely,

Kareem Abdul Transam

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The CIA has just compiled a briefing for the White House which contains the following information:

Item one: the U.S.S. Nixon has changed course and is now headed west towards the port of Bluefields, Nicaragua, approximately one hour sailing time.

Item two: World opinion favors the hijackers' attitudes and our NATO allies have requested we meet their demands.

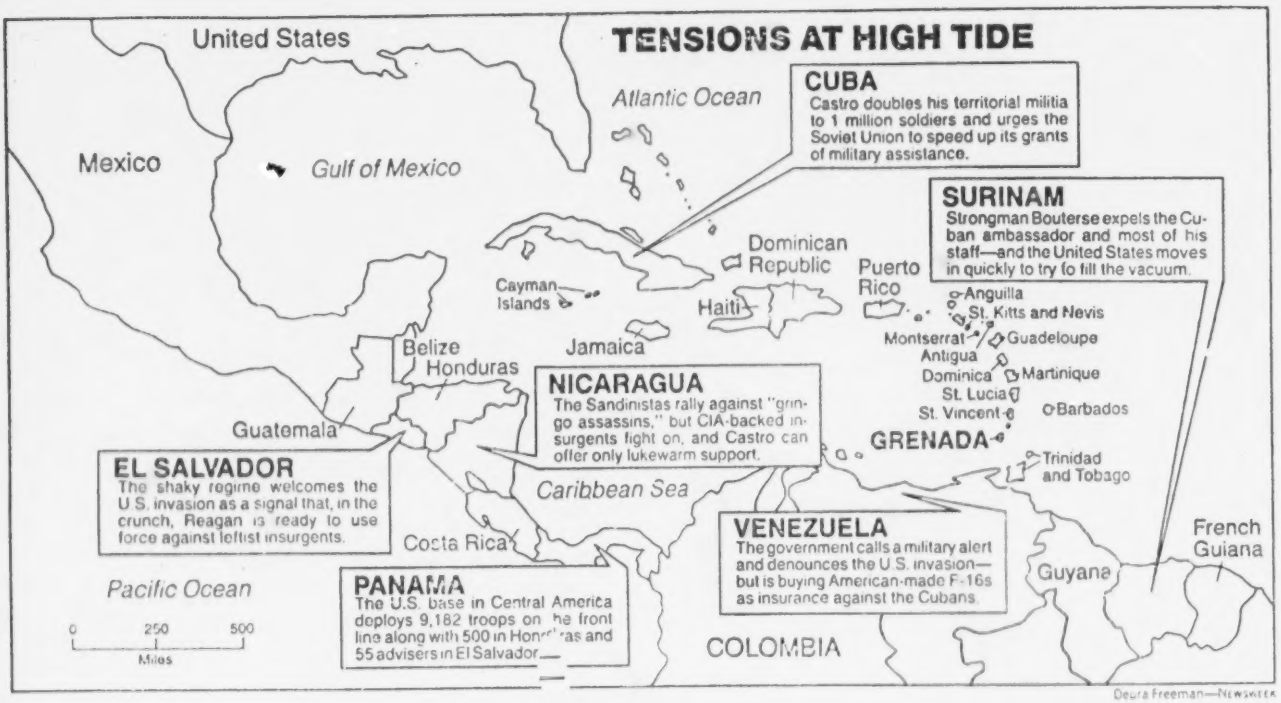
Item three: At the United Nations, Mexico threatens to seal off the border with the United States and cut off diplomatic relations if the U.S. refuses to negotiate with the hijackers.

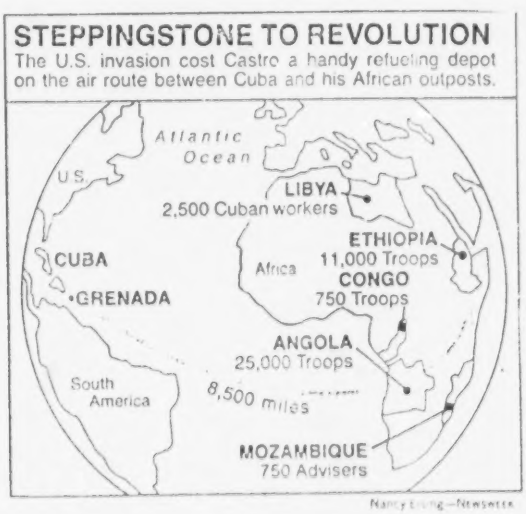
Item four: Cuba threatens to retaliate against the United States forces at the Guantanamo naval station in Cuba if the Americans attempt any military intervention.

Item five: Admiral Barnacle has informed the Pentagon that the 7th fleet is currently in Rio de Janeiro attending carnival, and it will be at least three days before they can reach a position which would allow them to aid in the crisis.

As president, you must now decide which of your two plans you would use.

NOTE TO TEACHERS: I use day two to give to each group different news releases as the day progresses. Notice how they respond to different situations.


TENSIONS AT HIGH TIDE
United States
Mexico
Gulf of Mexico
Atlantic Ocean
CUBA
Castro doubles his territorial militia to 1 million soldiers and urges the Soviet Union to speed up its grants of military assistance.
SURINAM
Strongman Bouterse expels the Cuban ambassador and most of his staff—and the United States moves in quickly to try to fill the vacuum.
Dominican Republic
Puerto Rico
Cayman Islands
Haiti
Jamaica
Belize
Honduras
Guatemala
NICARAGUA
The Sandinistas rally against "gringo assassins," but CIA-backed insurgents fight on, and Castro can offer only lukewarm support.
Anguilla
St. Kitts and Nevis
Montserrat
Guadeloupe
Antigua
Dominica
Martinique
St. Lucia
St. Vincent
Barbados
GRENADA
Trinidad and Tobago
EL SALVADOR
The shaky regime welcomes the U.S. invasion as a signal that, in the crunch, Reagan is ready to use force against leftist insurgents.
Caribbean Sea
Costa Rica
VENEZUELA
The government calls a military alert and denounces the U.S. invasion—but is buying American-made F-16s as insurance against the Cubans.
French Guiana
Guyana
Pacific Ocean
PANAMA
The U.S. base in Central America deploys 9,182 troops on the front line along with 500 in Honduras and 55 advisers in El Salvador.
COLOMBIA
0 250 500
Miles
Debra Freeman—Newsweek



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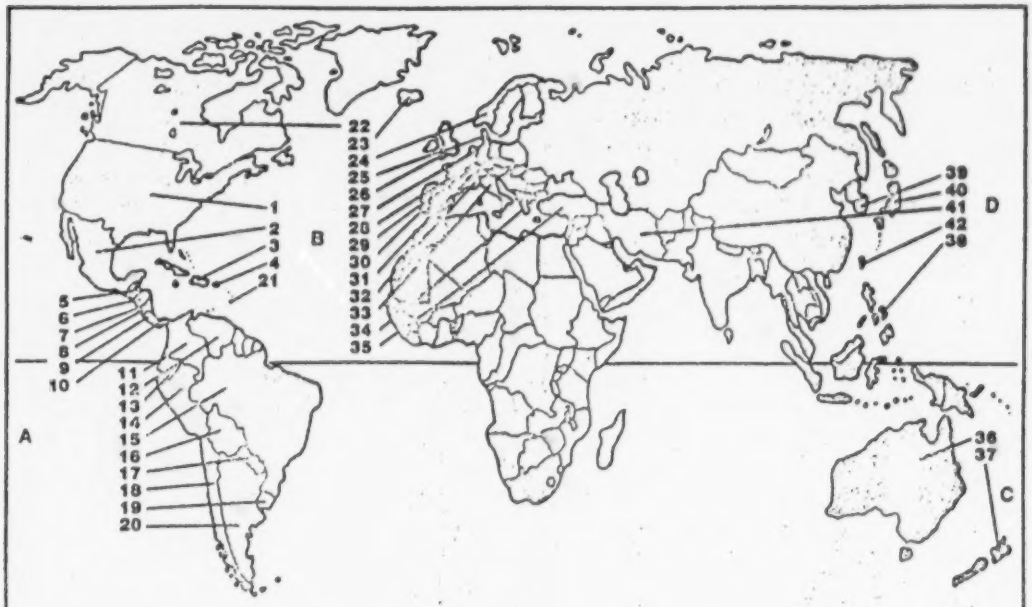

THE UNITED STATES AND ITS ALLIES

A. Rio Pact

1 United States	6 Honduras	11 Colombia	16 Bolivia
2 Mexico	7 El Salvador	12 Venezuela	17 Paraguay
3 Haiti	8 Nicaragua	13 Ecuador	18 Chile
4 Dominican Republic	9 Costa Rica	14 Peru	19 Uruguay
5 Guatemala	10 Panama	15 Brazil	20 Argentina

21 Trinidad and Tobago

B. North Atlantic Treaty (NATO)

1 United States	25 Denmark	29 Luxembourg	32 France
22 Canada	26 United Kingdom	30 Portugal	33 Italy
23 Iceland	27 Netherlands	31 Federal Republic of Germany	34 Greece
24 Norway	28 Belgium		35 Turkey

C. Anzus Pact

1 United States	36 Australia	37 New Zealand

D. Individually Allied with U.S.

38 Philippines	40 Japan	42 Republic of China (Taiwan)
39 Republic of Korea	41 Iran	

70863A/901699

Solving the Problems at Animal Farm

John Rahner Bohannon
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ABSTRACT
This lesson involves students role playing various solutions to the situation presented in the book Animal Farm through the use of conflict resolution techniques.

RATIONALE
This lesson is used as an introduction to the primary techniques of conflict resolution; students must already be generally familiar with those techniques.

GOALS

The goals of this lesson are to:

- Examine the spectrum of conflict resolution techniques available in any conflict situation;
- Through role playing assist the students in understanding the situations in which the various techniques are appropriate;
- Assist the students in developing the skills of role playing and brainstorming.

GRADE LEVEL
This lesson is appropriate for senior level classes in Civics, American Federal Government, or a course focusing on the Constitution. Ideally it would be integrated with the beginning of a block in English involving the book Animal Farm.

TIME TO COMPLETE
This lesson should be scheduled for approximately three normal academic periods.

MATERIALS
All students will need a copy of Animal Farm, or a copy of the first chapter (roughly nine pages, depending on the edition used).

PROCEDURES

a. Introduce the class by listing on the board some of the main conflict resolution techniques, such as:

Consensus
Mediation
Arbitration
Adjudication
Civil disobedience
Violence (not really a resolution technique)

b. Ask the students to define and give a hypothetical example of each one in practice. Make sure they are specific; it might help to use historical examples to be sure of their understanding.

c. Explain that over the next several class periods the students are going to experience each of these techniques through role playing. (Explain role playing if necessary.) The situation for the start of all the plays will be that contained in the first chapter of Animal Farm by George Orwell.

d. If the students have the book, have them look through it, noting especially that this is a fable in which biological reality is discarded for the purpose of illustrating political verities. You should explain something about the book's fame and the author, but not the plot of the story.

e. If the students do not have the book, provide them with copies of chapter one. Explain the book as above.

f. For homework ask the students to read the first chapter of the book. Assign one third of the class the task of concentrating on the roles of the animals - how do they view the conflict portrayed in the book? One third of the class should try to take on the perspective of the farmers: how do they feel about the situation

and the animals in general? The last one third should be as objective as possible and just try to understand the facts of the situation.

g. The next period should begin with the students separated into the three groups described above. Explain that the class is now going to try different ways of resolving the conflict portrayed in the book. Also appoint one or two students in each group to take notes on how successful each technique attempted is, what the prerequisites for success are, and whether any avenues appearing to lead to the resolution of the conflict were missed during the role plays and why.

h. Select a couple or more students to be spokesanimals and a couple to be Mr. Jones and another like minded farmer. (Remind the players of what their attitudes are according to the book.) Role play an attempt at consensus building by the animals. Observe the role play; make sure the note takers are busy; let the role play proceed to a natural stopping point. Complement the students on their efforts. Using the note takers as leaders, critique the lessons learned about consensus building as a conflict resolution technique. Focus on the need for both sides to want to solve the conflict, to essentially remove the idea of "sides".

i. Repeat this process with as many of the techniques as desired. Be sure to point up the nature of any arbitrators or judges used (from the third group): they are human, not animal. If civil disobedience is used, the animals need only meet with the humans and explain what exact form their disobedience will take and what their goals are. There is no need to go to war - that is in the book.

j. At the end of the role playing, be sure to spend adequate time (perhaps one period) comparing the ingredients necessary for the success of each of the techniques explored. This is the main focus of the lesson.

k. If the students have read the whole book, they can write an essay describing how the ending might have differed if violence had not been used at the start of the conflict.

DEBRIEFING
Included in the homework, role playing and discussions.

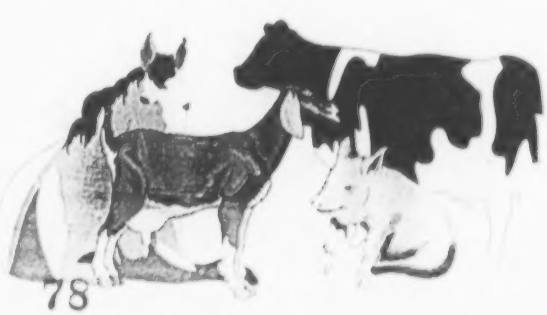
EVALUATION
Included in role playing.

TIPS FROM THE TEACHER

a. If a stage were available, it might add to the class. Also, a video camera to record the plays might allow for review of particularly critical moments.

b. Many students will have already read this book, but certainly not from this perspective. In fact, it might be better to schedule this class after all the students have read the book in some other class, such as English, to insure overall familiarity with the plot and characters.

BIBLIOGRAPHY
George Orwell, Animal Farm, various paperback editions.



70702A/89831

Alternatives To the Courtroom: Problem Solving through Mediation

Jo Ellen Ambrose
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Coon Rapids, Minnesota

INTRODUCTION/ABSTRACT

This lesson is designed to familiarize students with other ways of resolving disputes besides the traditional method of "taking it to court" or adjudication. It has three parts:

1. An explanation of mediation as an alternative dispute resolution process and how it differs from adjudication.
2. A role play activity where students role play the parties in a mediation situation.
3. A discussion of the strengths and weaknesses of mediation and adjudication, examples of which each process might best be used.

RATIONALE

Alternative Dispute Resolution has been developing rapidly over the last ten years mostly in response to congested court calendars and the expense of litigation. It has been mandated through legislation and court reform projects as well as contractually through private party contracts or employment working agreements. Whatever the circumstance, students living in the twenty-first century will probably encounter mediation or arbitration techniques in resolving family, work or community conflicts.

AUDIENCE

This lesson is appropriate for ninth through twelfth grade students. It is most appropriate when students have some familiarity with the elements of a trial. It can be used in any mainstreamed civics, futures or law course.

TIME TO COMPLETE

Approximately two one-hour sessions.

GOALS

As a result of this lesson students will;

- Identify key characteristics of mediation and compare and contrast these characteristics with adjudication.
- Adapt a problem-solving strategy while role playing disputants and mediator in a mediation situation.
- Describe the strengths and weaknesses of mediation and traditional adjudication.
- Students will note types of conflicts that can be handled more efficiently through these processes.

MATERIALS

1. Student Handout #1 with Conflict Resolution Diagram and chart outlining major features of mediation and adjudication (court litigation).
2. Student Handout 2, 3, 4, and 5 summarizing mediation and the steps of a mediation session.
3. Role play Handouts with confidential information for students playing disputants and mediators.

PROCEDURE, Part One

1. Introduction

Alternative Dispute Resolution, (ADR) is used to describe the processes that people can use to help resolve conflicts rather than going to court.

Two of the most common methods are called mediation and arbitration. Mediation is a voluntary process whereby two parties with differing viewpoints (disputants) create their own resolution under the guidance of an impartial or neutral mediator. The decision is binding only if the parties agree make it so. Mediation is the process focused on in this lesson.

Arbitration is a more formal process where the neutral third party listens to the evidence and arguments as presented by both parties and then issues a binding decision. Arbitration may be mentioned for background purposes.

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Both these methods are called "alternative" because they are different from the court trial process called adjudication. Adjudication is a more formal process because the parties are represented by lawyers who argue their cases before a judge or jury as the neutral third party. Formal rules determine what evidence is allowed as well as court procedure. The decision by a court of law is binding over the parties unless a higher court alters the decision as a result of an appeal. The parties must have a legal claim necessary for appeal to a higher court.

An underlying difference between adjudication and mediation is the overall objective of the parties. The goal of adjudication is to win--each party wants to achieve the outcome most favorable to their side. Usually there is a clear winner or loser. In mediation a problem-solving process is used. The objective of the process is to maximize the joint gain (or minimize the joint loss) of the parties--to split the largest possible pie between the parties.

2. Discussion Activity on Alternative Methods

Student Handout #1, containing a dispute resolution diagram and characteristics of dispute resolution processes, should be given to each student.

a. Start with the dispute resolution diagram. Ask the students if they have ever disagreed with a sibling over which television program to watch. What process is being used to help decide which program to watch? (Negotiation) If the two of you cannot agree, you might ask an older brother or sister to listen to the problem. This person may be good at suggesting different compromises that might help solve the problem. However, he or she may not force what they think is the right answer. They want the two of you to learn to work things out. (Mediation)

With no resolution, the problem only gets worse and now you and your sibling must present your case to a parent. Your parent sits back and listens to both sides carefully. Then he or she makes a decision that you are better off not contesting because it is "the law." (Arbitration)

If the conflict has not been resolved by any of these first three methods, you may take your "case" to a stranger (judge or Jury) who listens to your arguments presented by lawyers and will enter a decision for or against you. (Adjudication)

b. Today we will focus on only one of these methods--mediation. First, let's read through the explanation of mediation on Handout #2.

Now let's compare and contrast key characteristics of mediation with the process of court trials or adjudication. See Chart on Student Handout #1. You may want to leave the characteristics of adjudication blank so students can recall how a trial would differ from mediation.

3. Role Play Activity

a. In order to understand more about mediation the class will be divided into groups of three and each group will role play a mediation session.

b. Explain the steps in a typical mediation session. (Student Handout #2)

c. Students should choose one of three parties to role play in a mediation situation. These roles are Mr./Mrs. Wilson, Dennis/Denice the Menace, or the mediator at the Neighborhood Justice Center.

Distribute to each student the appropriate confidential instructions. Allow five minutes time for students to become familiar with the facts and then allow groups of three to mediate the dispute. Fifteen to twenty minutes should be sufficient time.

PROCEDURE, PART TWO

1. Debriefing

Ask each group to share with the class the terms of the agreement reached through mediation. Note the wide range of solutions and creative ways of solving the problem. How would a trial have resolved this case? Did the students feel the process was an efficient one? Why or why not?

2. Discussion

Now that students have experienced a mediation, have them identify its strengths and weaknesses. The list can be compared and contrasted with a similar list for adjudication.

List the following headings on the board:

Mediation	Adjudication
Strengths/Weaknesses	Strengths/Weaknesses

Questions

What do you see as the strengths of mediation?

Listen for: quicker process; cheaper; more efficient; more creative solutions; less of a traumatic impact on the parties; better chance of maintaining a workable relationship after the conflict is resolved.

What do you see as the weakness of mediation?

Listen for: difficult where more than two parties are involved in the dispute; less effective with complex issues; a party that has less power may be taken advantage of by a stronger party; parties that need to vindicate their position may not be satisfied; since a resolution is only binding if the parties agree to make it so, there may not be a true resolution to the dispute.

What do you think are the strengths of adjudication?

Listen for: justice will be done when each party has their day in court; consistency of application of the law: orderly process for complex issues; balancing of power between two parties; vindication of a party's position; binding decision.

What do you think are the weaknesses of adjudication?

Listen for: formal rules limiting evidence and remedies: narrow focus on conflict through the framing of issues; time and costs of litigation; emotional trauma to parties in testifying in court and being in an adversarial stance.

EVALUATION

Read through hypotheticals representing different types of conflict. Have students explain whether or not mediation or adjudication would be a better way to resolve the problem. Students should give reasons to support their choice. Brainstorm solutions that might be created if this problem were approached in a mediation session.

Hypotheticals

A. John Jones is shot in the arm by a person trying to burglarize his home.

B. Mr. and Mrs. Smith are getting a divorce. Mr. Smith wants custody of the children. Mrs. Smith strongly disagrees.

C. A car mechanic friend of Jane's went ahead and did $500 worth of work when Jane only authorized $200 of work to be done.

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HANDOUT #1 - WHAT IS MEDIATION

Mediation is a way to resolve problems between people. The people who are in conflict are called disputants and they have agreed to ask a third person or mediator to help them solve their problem. Most mediation is voluntary. In other words, the parties agree to mediate, they agree to the rules that will be followed during the mediation, and to the solution that is reached as a result of the mediation.

The mediator's role is to allow each party an opportunity to tell their side of the story, to identify the facts and issues that are in conflict and to suggest alternatives that would help solve the problem. As a facilitator, the mediator tries to surface underlying concerns and help the parties arrive at a solution to which both sides can agree. Sometimes a mediator may discuss the problem alone with a disputant in order to find out where they can agree. In that case the mediator brings the parties together to find common ground. Other times a mediator may ask the parties to reverse roles so they can better understand the other person's position.

It may take one meeting or several before a solution is reached that is acceptable to both parties. A mediator cannot force a decision over the parties. If the parties wish they may write up their agreement in a contract that will be enforceable by law.

STEPS OF MEDIATION

Step 1: Introduction
The mediator sets the parties at ease and explains the ground rules. The mediator's role is not to make a decision but to help the parties reach a mutual agreement. The mediator explains that he/she will not take sides.

Step 2: Telling the Story
Each party tells what happened. The person bringing the complaint tells his/her side of the story first. No interruptions are allowed. Then the other party explains his/her version of the facts.

Step 3: Identifying Facts and Issues
The mediator attempts to identify agreed upon facts and issues. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

Step 4: Identifying Alternative Solutions
Everyone thinks of possible solutions. The mediator makes a list and asks each party to explain his/her feelings about each possible solution. The advantages and disadvantages to each solution are discussed by the parties.

Step 5: Modifying and Discussing Solutions
Based on the expressed feelings of the parties, the mediator revises possible solutions and attempts to identify a solution on which both parties can agree. The mediator may ask to talk with each party individually in order to find out where middle ground can be met. Another technique a mediator may use is called role reversal where the mediator asks each disputant to repeat what they hear the other party saying.

Step 6: Agreeing on a Solution
The mediator helps the parties reach an agreement that both can live with. The agreement should be written down. The parties should also discuss what will happen if either breaks the agreement.

HANDOUT #2
MEDIATION ROLE PLAY ACTIVITY

Directions: Read only the role you have been assigned. Act out how you think that person would handle a mediation session. Be prepared to share your group's solution with the class.

HANDOUT #3
Mediator's Information

You are a volunteer mediator at the Neighborhood Justice Center. The city attorney diverts to your program minor complaints of vandalism, theft, etc. She has referred this matter to you for an out-of-court resolution Mr./Mrs. Wilson has complained that Dennis/Denice threw a brick through the windshield of his/her car. The city attorney, rather than treating this as a criminal matter prefers that the parties solve their own problem through mediation.

You should explain that the parties should make a good faith effort to solve their problem here and now as any criminal case will involve much more time and effort on the part of both parties.

Try to get at the parties' underlying concerns and urge them to come up with their own solutions.

HANDOUT #4
Mr./Mrs. Wilson's Confidential Instructions

You have filed a complaint against Dennis/Denice the Menace with the City Attorney. The lawyer in the City Attorney's office referred you to the local Neighborhood Justice Center, which scheduled a mediation hearing. You are not sure what mediation is about but you are angry with Dennis/Denice and you think that he/she should be punished for this act of vandalism.

Dennis/Denice broke the windshield on your car by throwing a brick through it. You did not see Dennis/Denice throw the brick but just before the windshield was broken you and Dennis/Denice had exchanged angry words. You had gone into the house and a short time later came out to find the windshield broken.

You want Dennis/Denice to pay for the damage. You have one estimate for $700 from a local Oldsmobile dealer. You have insurance that could cover the damage, but you would have to pay a $200 deductible. You want Dennis/Denice to pay the full amount because you fear your insurance rates would rise if you submit a claim.

You have lived next door to Dennis/Denice ever since he/she was born, 18 years ago. You have watched him/her grow up and until lately you have always shared a special relationship with Dennis/Denice. Ever since he/she graduated from high school he/she has not had time to visit with you and you miss the special times you had together. Shortly before the brick incident you had asked Dennis/Denice why he/she hadn't mowed your lawn that week as you hired him/her to do. You don't understand kids these days and think Dennis/Denice has turned into a selfish member of the "me" generation.

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HANDOUT #5
Dennis/Denice's Confidential Information

Mr./Mrs. Wilson has tiled a complaint against you with the City attorney and the local Neighborhood Justice Center. Mr./Mrs. Wilson claims that you broke the windshield in his/her car by throwing a brick through it. The Neighborhood Justice Center has scheduled a mediation hearing. You don't know exactly what this means but you are worried because you have just turned eighteen and don't want this to become a criminal matter in adult court. You did break the window in a fit of anger. However, the incident happened last Saturday in the early evening just as it was getting dark, and you are pretty sure that no one saw you.

You are eighteen years old and have known Mr./Mrs. Wilson all your life. When you were a kid you used to spend a lot of time visiting the Wilsons and Mr./Mrs. Wilson often took you to sporting events as a special treat. Since junior high you have been hired by the Wilson's to mow their lawn every week during the summer. But since graduating from high school you have been too busy working two jobs (to save money for college) and sometimes forget to mow Mr./Mrs. Wilson's lawn. You have never explained to Mr./Mrs. Wilson why his/her lawn hasn't been done.

Last Saturday, you had just turned in the driveway when Mr./Mrs. Wilson ran out of his/her house to talk to you. In a screaming voice he/she yelled how irresponsible and untrustworthy you were. You were embarrassed and responded by yelling back. Mr./Mrs. Wilson slammed the door as he/she went inside. You went in your house but just thinking about the incident made you angry and later in a fit of rage you picked up the brick and threw it not intending to hit the windshield. You are embarrassed about acting childishly and you would rather Mr./Mrs. Wilson didn't know that you broke the windshield but you do value Mr./Mrs. Wilson's friendship.

You are unwilling to pay for the windshield because you assume Mr./Mrs. Wilson has insurance that will replace the windshield.

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Who Should Build The Fence

Dawna Olsen
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Grace, Idaho

OBJECTIVES

1. To introduce students to situations where rights of different individuals are in conflict.
2. To identify the conflict in this situation.
3. To ask students to analyze possible solutions to the problem keeping in mind principles of fairness and legality.

MATERIALS NEEDED

A copy of the story for each student (1-A). Handout 1-B if case method approach is used.

TIME NEEDED

1 class period

GRADE LEVEL

10 - 12

CASE METHOD APPROACH PROCEDURE

1. Divide class into small groups.
2. Allow time to read and discuss the case.
3. Each group should complete handout 1-B.
4. Allow each group to report their decision to the class.

DEBRIEFING

At the conclusion of this activity read the following excerpt from the Idaho Code 35-103. Erection of partition fences. - When two (2) or more persons own land adjoining which is inclosed by one (1) fence, and it becomes necessary for the protection of the rights and interest of one (1) party that a partition fence be made between them, the other or others, when notified, must proceed to erect, or cause to be erected, one half (1/2) of such partition fence; said fence to be erected on, or as near as practicable to, the line of said land.

NOTE

The open range law states that persons adjacent to open range who wish to protect their property are solely responsible for erecting a fence. Due to the fact that Mr. Jones' property is enclosed by a fence, his property is not considered open range. Therefore his claim that "based on open Range Law there is no liability on his part to build a fence," is not valid.

DISCUSSION QUESTIONS

1. If the students' decisions differed from the existing law, ask why they reached the conclusions that they did and if their decision is fair to all parties concerned.
2. Is the existing law a good law? Why?
3. Would it really be in Mr. Smith's best interest to sue Mr. Jones and Mr. Doe?

PROCEDURE FOR ROLE PLAYING

1. Give each student a copy of handout 1-A.
2. Assign a student to play each of the following roles.

   Judge
   Mr. Smith - plaintiff
   Mr. Jones - defendant
   Mr. Doe - defendant
   Witness - County ASCS Administrator to explain the CRP Program.
   Witness - ASCS field inspector to testify that grazing of CRP land has in fact occurred.

3. Read existing law to the students. (see debriefing)
4. After a decision has been given discuss the following questions.

   a. If the judge's decision differs from the law, ask why he/she reached the decision that he/she did.
   b. Does the class agree with the judge's decision? Why or why not?
   c. Is the existing law a good law?

WHO SHOULD BUILD THE FENCE?

HANDOUT 1-A

Mr. Jones owns a field of 100 acres. Adjoining the field is a plot of 30 acres owned by Mr. Doe. Mr. Doe's ground is leased by Mr. Smith. There is no fence between the property owned by Mr. Jones & Mr. Doe. (see diagram) Mr. Smith (the lessee) has planted his plot of ground into Grass, and placed it in the CRP program.

The Conservation Reserve Program (CRP) is sponsored by the Agricultural Stabilization and Conservation Service (ABCS). The purpose of this program is to encourage farmers through 10 year contracts and annual payments from USDA to reduce erosion on highly erodible cropland by planting grass. If the grass is grazed by livestock the farmer can be expelled from the program.

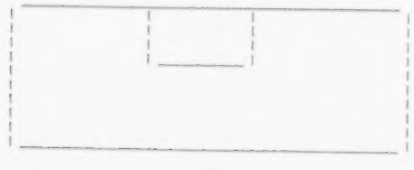
Mr. Jones uses his ground in the late fall to pasture his cattle. Because there is no fence between the two plots of ground, Mr. Jones' cattle graze upon Mr. Smith's field. This threatens Mr. Smith's eligibility in the CRP program. If Mr. Smith is expelled from the program, he will lose the money paid to him by the ABCS. He also will have to pay a penalty for early withdrawal.

Mr. Jones does not want to build a fence because he claims that Idaho is an open range State and that the fence would not be of any benefit to him. Mr. Doe does not want to build a fence because he has leased the ground to Smith, and he claims he does not receive the ABCS payments and so the fence would not be of benefit to him. Mr. Smith claims that although he would benefit from having a fence built, he does not own the land and he does not want to go to the expense of building a fence on another man's property. Who should build the fence?

DIAGRAM

Mr. Doe's 30 Acres (small box) unfenced

Mr. Jones' 100 Acres



HANDOUT 1-B

1. List the facts in the case.

2. In the following columns list facts that would be helpful to each man's argument.

MR. JONES	MR. SMITH	MR. DOE

3. What are the issues?

4. What is your decision? Write a short paragraph explaining your decision.

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Conflict Resolution

Mike Fleck
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Green Bay, Wisconsin

INTRODUCTION

This is a hands on exercise for conflict resolution that could be used at any level but focuses on International Relations--Balance of Power.

The students will discuss the methods used by the United Nations to settle disputes. I have received permission from Jennifer Bloom to use her Conflict Resolution Wheel and the students can apply its use to the United Nations using some current conflicts such as Afghanistan, Falkland Islands, and Grenada. Using news magazines from the period they can see how these conflicts became wars and see what steps were used to resolve the conflict.

AUDIENCE

Senior High Students - Tenth Grade World History students.

TIME TO COMPLETE

Approximately three fifty-minute class periods.

GOALS

The students will:

- discover the alternative steps available in conflict resolution;
- determine how some recent conflicts were resolved;
- learn to use Bloom's Conflict Resolution Wheel;
- locate articles from newspapers and magazines to show different levels on the Conflict Resolution Wheel;
- learn the official steps the United Nations uses to resolve conflicts.

MATERIALS

- Ms. Jennifer Bloom's Conflict Resolution Wheel
- Copies of current newspapers or news magazines
- Copies of Chapter Six of the United Nations Charter, Articles 33-51
- A world history textbook

PROCEDURE, PART ONE

1. Hand out copies of the United Nations Charter (Chapter Six, Articles 33-51, " Pacific Settlement of Disputes").

2. Have the students read the Charter sections dealing with settlement of disputes (cited in previous sentence).

3. Have students locate and list the steps in conflict resolution in the United Nations Charter.

4. Discuss the steps the students have listed on their sheets or list them on the blackboard and discuss them.

5. Hand out copies of Jennifer Bloom's Conflict Resolution Wheel (Handout #1). Discuss the wheel and its use. Explain that you start on the top at 12 o'clock and keep moving clockwise around the wheel until the conflict is resolved or a war begins.

6. ASSIGNMENT: Take current newspapers and/or news magazines and fine examples of various steps on the Conflict Resolution Wheel.

PROCEDURE, PART TWO

1. Discuss assignment. Which steps were easiest to find? Which steps were hardest to find? Discuss some of the student articles to make sure students understand the steps on the wheel.

2. Choose one of the recent conflicts in the World such as Afghanistan, Falkland Islands, Grenada, etc. Find 1-3 good articles on one of these conflicts and make copies for each student.

3. Have the students read the articles and make their own conflict resolution wheels by placing the various efforts of conflict resolution on a circle.

4. Discuss the student Conflict Resolution Wheels. Which steps from Bloom's Wheel were not used? Could the war have been prevented if all steps were used? Why did this war occur?

5. ASSIGNMENT: Go back to the time period you were assigned for the first part of this unit. Select one of the wars that occurred during this period. Use the Conflict Resolution Wheel and then list the steps used to try to resolve the war from your time period.

This could be done as a group using the same groups established for the assignment in the first part of the unit.

PROCEDURE, PART THREE

1. Discuss the assignment. Have one student from each group go to the blackboard (or overhead projector) and put their War and Conflict Resolution Wheel on for the rest of the class. Discuss each wheel.

EVALUATION

This would be part of a larger unit test. A good essay would be to make up a conflict and give as many details as possible. Have the students put the information on a conflict resolution wheel and analyze them.

BIBLIOGRAPHY

United Nations Charter - Chapter VI - *"Pacific Settlement of Disputes,"* Articles 33-51.

Falkland Islands War--Look in any newspaper or magazine for the period May to July, 1982 and there will be numerous articles to choose from.

Grenada--Again look in any news magazine for November or December, 1983 and there will be numerous articles available.

Coyle, David C. *The United Nations and How it Works.* New American Library, New York, 1962.

CHAPTER VI. PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

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Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

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Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

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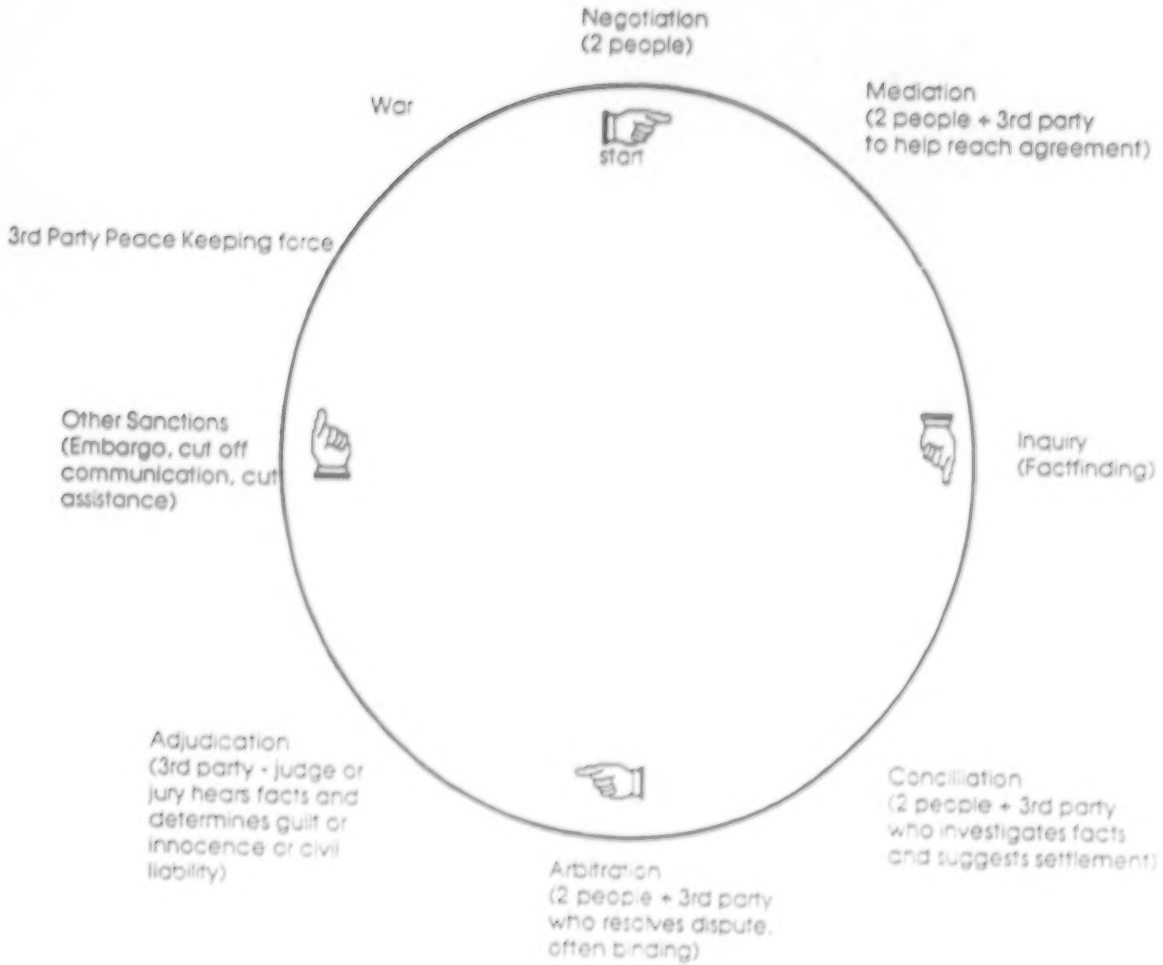
HANDOUT #1

CONFLICT RESOLUTION WHEEL



© Developed by Jennifer Bloom, Director, Center for Community Legal Education, Hamline School of Law, St Paul, Minnesota, 55104

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Greenwich - Values in Conflict: A Simulation Experience

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UNIT CAPSULE

What do you do if you have a problem with too many sheep and not enough grazing land to support them? This is the problem the small community of Greenich is facing. For years the sheep farmers of this small community have owned their own sheep and the grazing land was held in common for everyone to graze his/her sheep. Each sheep raiser can make more money by adding to his or her flock. The cost of raising additional sheep is borne by the community, while the profit from the sheep goes to the individual. This system has worked very well for Greenich, but now there is a big problem. Some people are raising too many sheep and overgrazing of the land is taking place. If this trend continues, there will be disaster in Greenich. The problem is that individuals acting in their own self interest are creating a collective tragedy.

Three people have suggested possible solutions to this problem. The class will listen to each of the solutions, ask questions, and eventually vote for the group that they believe presents the best plan.

OBJECTIVES

To create an understanding that individual freedom to do as you please may not be in the best interest of society as a whole.

To realize that the values of individualism and community good, quite often clash and are difficult to resolve.

To give students the idea that solutions to problems are usually controversial and that not all members Or a society can be pleased.

To create a classroom atmosphere that encourages the expression of student attitudes and feelings about capitalism, communism and combinations of the two systems.

To give students an awareness that the different types of economic systems all have advantages and disadvantages and that any one system is not better than the other.

Hopefully, students will be able to see the strengths and weaknesses of various economic systems.

To develop a better understanding of the collective economies practiced by many of the nations of the world today and why the people who live in these countries believe their system is best for them.

TIME

This simulation should take from three to four class periods to complete. The time period may vary depending on teacher and student interest. The following time frame is only a guideline.

Day One - Preparation and distribution of materials
Day Two - Role play - Presentations and elections
Day Three - Evaluation and conclusion.

MATERIALS

Handout #1 - The Problems of Greenich
Handout #2 - Position Papers of three Solution Planners
Handout #3 - Election Procedure Instructions

DESCRIPTION OF LESSON UNIT

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DAY #1

Class atmosphere. Write on the blackboard or overhead, the words Society, Values, Conflicts. Briefly discuss the definitions of these words and ask the class to list examples describing these words. Then tell the class that they will be participating in a simulation exercise which will be about society, values and conflicts.

Pass out Worksheet #1 - The Problems of Greenich. Have the students read it silently.

Ask for three volunteers to role play Solution Planner #1, Pat Wilson, Solution Planner #2, Jesse Anderson and Solution Planner #3, Lynn Treedon. If no one volunteers, select three of the most outgoing, dependable students. Have these three randomly select their role. Give each of them Worksheet #2 Position Papers, and Worksheet #3 - Election Procedure Instructions. Remind them that Pat Wilson and his/her family own 90 sheep, Jesse Anderson's family owns 10 and Lynn Treedon's family owns only 2. This is important information to each of the three Solution Planners.

Remind each of the three to do the best possible job they can "selling" their plan to the class even if they personally disagree with the plan. Encourage them to read all their materials carefully, especially their Position Papers. Tell them they must be ready to present their cases tomorrow. (or the next class day)

Have the rest of the class randomly select families to role play. Probably the best way to do this is to have small index cards with the family name and sheep owned written on one side (see sheet labeled, "THE PROBLEMS OF GREENICH"). On a large flat surface, such as a table, place the index cards blank side up on the table and allow the students to select a card. The game is designed for 32 students. If you have less than 32 eliminate the families with the least number of sheep and work up. Remember that the Wilson, Anderson or the Treedon families should not be included in this card list because they are already assigned to the Solution Planners. Remind the students that the number of sheep they own is important because it signifies the wealth the family possesses.

DAY #2

Pass out Worksheet #3 - Election Procedures Instructions and quickly go over this information. (the three Solution Planners already have this sheet) Encourage the class to ask questions and to represent their families as best they can.

Begin with Planner #1, Pat Wilson. After his/her presentation, open it up for questions.

Follow with Planner #2, Jesse Anderson. After his/her presentation, open it up for questions.

Finish with Planner #3, Lynn Treedon. After his/her presentation open it up for questions.

After all the presentations and questions are completed, have the three Solution Planners randomly select who will be first, second and third for the Rebuttal phase. Remind the students that there are to be no interruptions or questions during the three Rebuttals.

Next pass out small sheets of paper to each student. Write on the board or overhead the names of the three Solution Planners, Pat Wilson, Jesse Anderson, and Lynn Treedon. Have each student (include the three planners) vote for one. Count the ballots and announce the winner.

If no one plan captured the majority of votes, have the class form a big circle and discuss possible alternative plans that would be acceptable to the majority of families. If no plan gains a majority, and none seems likely, terminate the simulation.

EVALUATION AND CONCLUSION

As a homework assignment have the students write the following: (due the next class Period)

1. An essay about their reactions to the simulation.

2. List the advantages and disadvantages of each of the three plans presented to the class.

3. Have the students zero in on Plan #3, of Lynn Treedon, answering the following questions:

   a. Could such a plan really work?

   b. What conditions would have to exist for it to work well?

   c. Would you like to live in a community such as Greenich under such a plan? Why or why not?

4. Which plan would citizens of the United States likely adopt? Why?

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5. Which plan would people in the Soviet Union likely adopt? Why?

DAY #3

Post Simulation Discussion

A. Collect the student assignments and discuss the question listed on the assignment.

B. Discuss the question, "What was the purpose of the simulation? What were you suppose to learn?"

C. Write on the board or overhead some final conclusions dealing with the simulation. The answers will vary with each class.

D. Write the words, Society, Values and Conflict again on the board. Discuss the simulation in light of these three words.

E. Ask the question, "If you used this simulation in a class of high school students in the Soviet Union, how do you think they would have responded? Why?"

F. Conclude this unit by emphasizing the fact that societies solve their value conflicts in different ways. They may resolve them in ways that are very different than how we would resolve them in the United States. Stress the fact that their solutions are not necessarily wrong, just different. This simulation should be a good introduction into the study of the Soviet Union and its value difference with that of the United States.

HANDOUT #1
THE PROBLEM IN GREENICH

Greenich is a small community of only thirty-two families. All the families are of the same nationality and all share similar ethnic and cultural values. Each family raises sheep for its living. They sell their wool and mutton to neighboring communities. Their land is ideally suited for raising sheep and there is a big demand for wool and mutton in their region. Each family in Greenich owns their own sheep, but the grazing land is held in common, that is the land belongs to and is available, to all the people in the community. This land can support about 500 sheep. At the present time the total number of sheep is 490. There is no other available land for grazing as Greenich is surrounded by other communities.

Each of the families have their own vegetable gardens and as a result each family is self sufficient. However the sheep are their only source of money needed to buy goods from the neighboring communities. Obviously, the more sheep you own, the wealthier you are. Three families are very wealthy: the Wilsons, the Paulsons and the Cathers.

Each sheep raiser can increase his/her own situation by adding to his/her flock. The cost of raising additional sheep is borne by the community, while the profit from the sheep goes to the individual. This system has worked very well for Greenich, but now there is a big problem. Some people are raising too many sheep and overgrazing of the land is taking place. Soon the grazing land will be unable to support any more sheep. The land can hold 500 sheep and the present number is 490. If this trend of more sheep continues, there will be disaster in Greenich.

To combat this problem, three people have come up with different plans to help resolve this impending crisis. Your task is to listen to these three positions, and questions and vote for the group that you believe best solves the problem for Greenich. Listed below are the current sheep numbers per family.

Family and number of sheep

Wilson--90
Paulson--74
Cather--56
Sony--20
Mackay--19
Peterson--19
Johnson--18
Esland--17
Nygren--14
O'Leary--14
Zack--12
Adams--12

Bossler--11
Yadlosky--11
Olson--11
Milroy--11
Anderson--10
Carlson--10
Early--10
Monson--10
Zickly--9
Frankson--9
Grantly--7
Henson--7

Nyberg--5
Qunicy--5
Ratsol--4
Sheppard--4
Jones--3
Smith--3
Treedon--2
Ultro--1

HANDOUT #2 - POSITION PAPERS OF THREE SOLUTION PLANNERS

INSTRUCTIONS: Read your position papers carefully. If you don't understand some aspect of your position, see your instructor. Know the strong points of your plan very thoroughly because you will be presenting your plan and its strong points to the class. You may personally disagree with your randomly selected position but do the best job possible to "sell" the class your solutions. Be enthusiastic about your plan!! Also realize that your plan has its weaknesses. Be prepared to explain these away. You will be asked questions on these weak areas so prepare answers in advance that are logical and that sound good. I cannot stress this enough - you will be questioned thoroughly on these weak points so be prepared for them. Also read over the two other plans of your rivals. Especially know their weaknesses and be prepared to ask them questions and debate them on these issues. Remember that you are attempting to persuade the other class members to vote your way. Good luck!!

PLAN #1 - Pat Wilson
The Wilson plan is to retain the present system of private ownership of the sheep and keep the size of each flock at its present size. This plan suggests a formation of a democratic council of 10 people that would be elected by the entire community and paid for by a $1.00 charge per sheep. Their duty would be to see that the limits are enforced. If families violate this policy, they will be fined and their sheep confiscated and sold. The profits of these confiscated sheep will be distributed equally among the families who have not violated the limits. Wilson feels this is a very good plan because it sets the limit at 500 sheep and does so with the minimum of inconvenience to all thirty-two families. Also tho Wilson plan addressed an immediate crisis with quick, fair action.

PLAN #2 - Jesse Anderson
The Anderson plan is to divide the commons grazing areas into 32 equal private lots. In that way, each family is responsible for its lot and if it overgrazes then they have only themselves to blame. If individual families want to purchase other families' lots or portions of lots from other families this is permissible. Jesse believes this is the fairest way to solve the situation because it still allows for private ownership of the sheep, but also places all the responsibility on each family for their land. Representatives of each family will resolve any problems that may crop up and enforce any decisions voted on by the 32 representatives.

PLAN #3 - Lynn Treedon
The Treedon plan is very simple. If the commons grazing area is now owned by everyone, then why not have all the sheep owned by everyone also? A limit of 500 sheep would be set and enforced by representatives of all the 32 families. The families would all share in the tending, shearing, slaughter and selling of the sheep. All profits made from the sale of wool and mutton would be evenly divided among the families according to the size of the family. Those families that refused to do their share of work would not receive any of the profits. According to this plan, it is the fairest way to solve the problem and also the only solution that utilizes the community pride that exists in Greenich.

HANDOUT #3

ELECTION PROCEDURE INSTRUCTIONS

1. All students should read very carefully, Worksheet #1 - The Problems of Greenich.

2. The students who will be assuming the roles of the three solution planners, Pat Wilson, Jesse Anderson and Lynn Treedon, will have had to also have read their Position Papers very carefully.

3. Solution Planner #1, Pat Wilson will present his/her plan to the class. He/she will attempt to "sell" the plan to the rest of the class pointing out the advantages of the plan.

4. After Pat Wilson is finished, there is a question and answer period in which Jesse Anderson and Lynn Treedon should ask questions and point out disadvantages of the Wilson plan. All other class members are encouraged to participate also.

5. After the questioning of Pat Wilson is complete solution Planner #2, Jesse Anderson, will present his/her plan to the class. After this presentation will come a question-- answer period led by Pat Wilson and Lynn Treedon and the rest of the class.

6. After the questioning of Jesse Anderson is complete, then Solution Planner #3, Lynn Treedon, presents his/her plan. This is followed by a question-answer period led by Pat Wilson and Jesse Anderson plus the rest of the class.

7. After the presentation of the three plans, plus the question-answer period comes the Rebuttal. Each Solution Planner will draw a card to determine who will go first, second, and third. During the rebuttal each candidate will summarize the good points of his/her plan and the weaknesses of the other two plans. There will be no interruptions or questions during the rebuttal phase.

8. Next comes a secret ballot vote by each class member for the plan of his/her choice. The students must remember to vote according to their roles (how many sheep they have) and who they believe presented the best plan. A majority vote is required to win. If no majority exists, then the class must sit down and figure out a different plan or compromise that satisfies the majority of the class members. The three Solution Planners get to vote also.

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Comparative Study of Dispute Resolution: The Adversary vs. Non-Adversary Process

Mike Yeagley
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INTRODUCTION

The students during this lesson will make comparisons of various methods of resolving disputes. The handouts will aid the students in assembling information needed in a topic area, and comparing advantages and disadvantages of alternative approaches to the topic of dispute resolution.

To gain an appreciation of our legal system, and recognize the strengths and weaknesses, the students will compare the adversary process used in the U.S., with the non-adversarial procedures of Western Europe. It will be most helpful if this exercise is used after a mock trial has been conducted in class.

As a final activity, materials are included to allow students to re-enact a trial which took place in West Germany over 20 years ago; the trial of Dr. Ulrich Brach. This will illustrate the non-adversarial nature of the continental trial system used in Western Europe.

AUDIENCE

Grades 11 & 12 - law studies class or government class.

TIME TO COMPLETE

2-3 (50-55 minute) class periods depending on which option of presentation you choose to use.

GOALS

As a result of this lesson, students will:

Be able to explain the strengths and weaknesses of the trial procedures used in both the U.S. and Western Europe.

Make comparisons between the U.S. and continental legal systems.

Determine if the strengths of the continental system could be adapted to our system.

Compare the two systems in terms of fairness, efficiency, costs and procedures.

Evaluate the methods of determining facts in a criminal case.

MATERIALS

A copy of the article "There is an Alternative to the Adversary System." By Charles White. *Update* magazine.

Handouts:
1) Dispute Resolution Chart
2) Option # 1 -- Adversary vs. Non-adversary System of Justice.
   Option # 2 -- Chart
3) Comparison Worksheet.

Completed chart for teacher use or discussion

PROCEDURES

DAY ONE

1. Introduce this lesson by brainstorming with the class different methods to resolve disputes. Write this list on the board.

2. Follow the brainstorming session with a discussion centered on:

   a. which method seems to be the fastest?

   b. which method seems to be the most socially acceptable?

   c. would different countries have different answers to "socially acceptable" question?

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The chief judge dominates the proceedings. Sybille Bedford, an Englishwoman familiar with her country's system of justice, writes, "It was a strange experience to hear the (attenuated) inquisitorial procedure at work, to hear all questions, probing questions and soothing questions, accusatory and absolving questions, questions throwing a favorable light and questions having the opposite effect, flow from one and the same source, the bench, and only from the bench, while public prosecutor and counsel for the defense sat mute, taking notes."

The judge's questions are based on the accused's dossier–the extensive file on the case which has been built up by police and prosecutors through months of questioning of the defendant and other witness in the case. Having extensively studied the dossier, the judge is prepared to bring out by his questions the full story of the incident as well as background events leading up to it.

The judge is an impartial questioner. Unlike the prosecution and the defense lawyers we are familiar with in our system, who are preoccupied with getting only their side of the case into the record, the judge methodically seeks to get the whole story. Sometime, his manner is relaxed and informal, designed to put the witness at ease. For example, in questioning the doctor about his nine-hour drive home the night before the incident (an important consideration in determining his mental state), the judge asks about the road conditions, and finding out that the doctor had to contend with ice and patches of fog, remarks, "Sounds filthy. We all know that road."

Later on, in questioning the doctor's daughter, the judge "asked her some questions about school; he nearly made her laugh; then, friendly and matter of fact, he told her that now they must speak about those disagreeable things." According to Sybille Bedford, the judge's informal manner and offhand questions, "informed by moderation, good sense and respect for other people's feelings...[constituted] a performance of high human quality."

In keeping with the informality of German trials, there is no witness stand; rather, witnesses merely face the court and are questioned. At one point in the proceedings, a witness raises a point not covered by Dr. Brach's testimony, and the judge, rather than calling Brach anew and swearing him in, merely looks over to where he is sitting and asks him a question based on what the witness has said.

Much of the trial is taken up with a long examination into Dr. Brach's character. One of his supervisors in the army is represented by a letter; another testifies in person. The most important analysis of the defendant, however, is the testimony of a professor of psychiatry employed by the court itself, not by one or the other of the parties. The professor describes Dr. Brach as a man "rather lacking in initiative, decent, but clumsy and without drive, a man who found it very hard indeed to get a grip on reality." His lack of personal aggressiveness, the professor says, made him act the way he did when he had to cope with the situation in the park.

Through the judge's patient, careful questioning, the essential facts emerge. That Dr. Brach thought he had the right to use force if necessary to make the arrest. That there was little chance of the man successfully getting away at the wall, since the boy was holding on to his legs until frightened off by Brach's shots, and, in any event, the man probably would not have escaped even if he did get over the wall.

Wrapping It Up

Even though a number of persons testify–including Dr. Brach's wife, the adolescent boy who tried to help Brach control the man, a couple who saw the shooting in the park, and several women victimized by the exhibitionist–it only takes the court a little over a day to hear all the evidence. The prosecutor and the defense counsel have the opportunity to ask supplementary questions, but rarely do so. Their only important role in the case comes at the end, when each delivers a final statement to the judges.

In a long lifeless speech, the prosecutor says that although the law permits citizen's arrest, it does not permit any physical violence to be used in such situations. Admitting that the doctor was under psychological strain, the prosecutor argues that he must bear the consequences of his "own willful decision to wound another man." He says that a verdict of not guilty would pave the way for vigilante justice. In recommending a sentence, he recognizes that Brach had an impeccable previous record, and notes that he would be dismissed from the army if sentenced to a year or more of prison. Therefore, he suggests that a sentence of 10 months would be "the just and sufficient retribution in this case," making it clear to Brach and the public that people can't take the law into their own hands.

The defense lawyer's speech, though equally long-winded, is entirely different. Mrs. Bedford had been struck by the "moderation" of the trial, "the climate of impartial reserve, the abstention from censorious comment: censure of the dead man against whom nothing could be said to have been proved, restraint from censure (on the whole) of Dr. Brach who is not yet convicted." However, the defense lawyer makes the kind of arm-flapping, stem-winding speech we would associate with country lawyers of the old school. He points out that the true criminal isn't on trial, that Brach's shot rid society of an obnoxious character who might even, someday, have murdered a child. Citing a number of previous cases, he says that the law permits violence in an emergency situation, which surely this was. He asks for a verdict of not guilty.

The case raises all sorts of troublesome issues, and we might expect a jury to puzzle over it for a long time, but the German panel is ready with a verdict (and a justification of the verdict) within four hours. At 6 p.m. on the trial's second day, the presiding judge announces that Dr. Brach has been found guilty and sentenced to four months imprisonment, to be suspended while he serves three years of probation. His weapon is confiscated, and he is ordered to pay the cost of the prosecution.

The judge goes on to read a statement indicating the reasons for the judgment. The shot that killed the man had neither been justified in law nor necessary in fact. There had been no emergency, at least not as the law defines it. In mitigation, though, the doctor had a blameless past and faced a grim situation as a parent, aggravated because as a doctor he knew what exhibitionism could do to a child, and because his own enforced absences from home made him unable to take action earlier. And, due to lack of sleep and a grueling drive the night before, the doctor had been "below

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par" on that day. Furthermore, he was the head of the family--there was now a new seven-month-old baby--and might face civil liabilities from a legal claim filed by the victim's widow. "In view of all these circumstances," the judge says, "we hold the sentence of four months deferred to be the just and sufficient penalty for this deed."

That's not quite the end of it. Within five weeks after the trial, the professional judges are required to file a lengthy document thoroughly going over the evidence in the case, analyzing the legal issues raised, and justifying the decision finally reached. In Dr. Brach's case, this document is 6,000 words long (about the length of this article).

Was the verdict fair? It seems pretty clearly a compromise, acknowledging the principle that one must obey the law, even in trying circumstances, but applying a very mild punishment to Dr. Brach. An American court might have completed exonerated Brach (assuming the case even came to trial), but perhaps we are more tolerant of vigilante than other countries. Given the circumstances--the case was decided just 14 years after Germany had emerged from a lawless, militaristic dictatorship--the verdict may well have been just.

But even those who have misgivings about it would probably agree that the German system provided certain benefits for Dr. Brach. The trial was short, and he and his family were spared hours of unpleasant cross-examination. Nor were they kept long in suspense waiting for a verdict. Most important, the doctor presumably was spared the kind of staggering bills he could have expected in our system. He had no need to employ specialists to help select a jury, nor did he have to hire experts to testify on his behalf. Moreover, given the shortness of the trial and the limited role of lawyers in the German system, he probably paid his lawyer much less than an American defendant would have. And if he had won the case, the state would have paid his legal bills.

Which System is Best?

It's impossible in a short article to go over every point of difference between the two systems, but here are a few of the major arguments in favor of German procedures. (Readers interested in the whole story couldn't do better than consult John Langbein's book, Comparative Criminal Procedure: Germany, a thorough, thought-provoking, and very well-written examination of the German system. It's the basis of much of the rest of this article.)

Fact Finding. American lawyers have an almost mystical faith in the ability of an adversarial trial to bring out the truth. They believe that rigorous direct and cross-examination by top-flight lawyers will uncover all sides of the story, unearth every relevant detail.

But does reality live up to myths? Judge Jerome Frank, a strong critic of the adversarial process, argues that the adversarial system is an artificial one that can very easily obscure sober fact finding.

For example, our system of direct examination and cross-examination is a sure fire way to make any witness--even the most truthful--uncertain and ill-at-ease. As one witness said, "I want to tell the truth, but every time I try some lawyer objects." In case witnesses aren't traumatized enough, handbooks for lawyers suggest all sorts of techniques to unsettle hostile witnesses, minimize the effect of their testimony, and make them seem evasive. According to Judge Learned Hand, "About trials hang a suspicion of trickery and a sense of victory depending upon cajolery or worse."

As Judge Frank points out, in every case, at least one party is supremely interested in misrepresenting, exaggerating, or suppressing the truth. And there may be cases in which neither side has an interest in the full truth coming out. In the trial of the Watergate burglars, for example, the defense wanted to treat the whole thing as a minor break-in and get it over as soon as possible. The prosecution, naturally enough, was interested in convicting the men actually on trial rather than conducting a wide-ranging inquiry into the whole case. The truth did come out, thanks to some vigorous questioning from the bench by Judge Sirica. But in taking upon himself the task of questioning the defendants, Judge Sirica was abandoning the passivity usually associated with judges in our system and was, in fact, behaving much more like the presiding judge in a continental trial.

American judges are usually like umpires in a ball game or referees in a fight. They are there to ensure that the rules are obeyed and the contest fair, but it's the contestants who determine the result. German judges get into the action. They have the duty of independent investigation and must satisfy themselves of the justness of the result. Therefore, they conduct a trial in all cases, even when the defendant confesses. Thus the guilty plea, which ends so many proceedings here, really has no counterpart in the German system. The German court will conduct its own inquiry, even in seemingly open and shut cases, until it is satisfied that justice has been done.

Part of its concern for the whole story is shown in the way it questions witnesses. Another example is its willingness to consider issues not raised by either side. In the case of Dr. Brach, the German court took it upon itself to consider two possible defenses that were not raised by the defendant and his counsel: that Brach acted either in self-defense or under duress. Though the court eventually determined that neither defense was justification for his act, the judge no doubt felt that they had to consider these defenses to fully canvass the case and consider every relevant aspect.

"Professional" Judges and Prosecutors. Our judges are almost invariably veteran lawyers who were appointed or elected after years of private practice. In Germany, however, lawyers can spend their whole career on the bench. They do not enter the judiciary from private practice, but rather choose a judicial career upon finishing a two-year apprenticeship after their university legal training. Appointments to the judiciary are by merit, and since judicial posts are prestigious, the ministry of justice can fill most vacancies from the top of the class. After a probationary period of three or four years, judges with satisfactory records are promoted to life tenure.

Prosecutors are also career civil servants. In our country, state's attorneys and attorneys general are usually elected, often after they have had a career in private practice. Moreover, many subordinates in these offices are political appointees rather than civil servants.

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In Germany, however, prosecutors generally have chosen their career after their apprenticeship and usually hope to follow it for life.

Clearly, the German system ace some advantages. Judges and prosecutors don't have to worry about re-election, and so can concentrate on delivering justice, even in the most sensational cases. Moreover, they are specifically trained for their jobs, which they expect to perfect over a lifetime of service.

Some Other Advantages?

The Role of Laypeople. In his book on German criminal procedure John Langbein writes that "the jury system lies at the root of much of the dissatisfaction with common law criminal procedures. We select, inform, control, and review juries in ways that have become ever more complicated, time-consuming and expensive." Since jury trials are unwieldy they are used less and less often here. Instead, plea bargaining disposes of a great majority of cases, in ways that may have nothing to do with justice.

Yet despite the many difficulties with making the jury system work, American lawyers and judges think that it is essential as a means of involving the general public in the legal process. Without juries, they reason, the law would seem imposed on the people by an elite, professional cadre, rather then a democratic institution in which lay people play a key role.

The German system of lay judges may be a compromise worth trying, a way of integrating lay people into the process without running into all of the complications and expense of the jury system. There are many levels of courts in Germany, each with varying proportions of lay and professional judges, though in almost all courts the lay judges are in the majority. As the Brach case shows, the lay judges sit in judgment with their professional colleagues.

Lay judges serve 12 days a year. Like American jurors, they receive a modest salary for their days of service. The court in which they will serve and the days on which they will serve are determined by public drawing of lots.

The German system of assigning jurors avoids most of the expense and delay of the American system. In Germany, lawyers have to accept whichever lay judge is assigned randomly to the case, except in very narrow circumstance, as when a lay judge is a victim or witness in the case, or is related by blood or marriage to the victim or accused.

Another advantage of the German system is that lay juoges have more opportunity to become involved in the truth-seeking process. Jurors almost never are permitted to ask questions of witnesses, but lay judges have the same questioning privilege as their professional counterparts.

The German system also avoids another difficulty with the Anglo-American system. As an American jurist has pointed out, "juries have the disadvantage...of being treated like children while the testimony is going on, but then being dosed with a kettleful of law during the [judge's] charge that would make a third-year law student blanch." After the charge, they must deliberate alone, generally without guidance from the judge.

In contrast, German lay and professional judges deliberate together. Therefore, the professionals are well placed to answer questions about what degree of proof is necessary and how possible factual doubts might be handled.

Speedy Trials. By Anglo-American standards, German trials are very rapid. One study showed that almost half of the criminal trials last approximately two hours. Similarly, deliberations about the verdict and sentence don't take long, lasting about an hour for each day of the trial. (These figures don't take into account the lengthy statement of reasons drafted by the professional judges after the verdict has been announced.)

Plea Bargaining. Langbein calls Germany "the land without plea bargaining." In America, prosecutors bargain over pleas because their office and the courts are overwhelmed with cases. Langbein and others assert the German system still works, permitting a thorough investigation and full-fledged trial in all cases.

Besides, they say German prosecutors couldn't plea bargain if they wanted to. Unlike their American counterparts, who have full authority to modify or drop charges, German prosecutors are required by law to prosecute all cases for which there is sufficient evidence. And they have no inducement to bargain even if they could, since all cases (even ones involving guilty pleas) go to trial, and the trials are brief in any event.

The Other Side of It

Defenders of the Anglo-American system dispute every one of these claims. As for fact finding, they point out that questioning by the police and prosecutors forms the basis of the accused's dossier, and thus forms the basis of the judge's questioning at the trial. Since police and prosecutors are concerned with building a case against the defendant, many think this stacks the deck unfairly.

Continental judges and prosecutors may lack the wide experience that their American counterparts have. Moreover, they may see themselves first and foremost as bureaucrats, answerable to their superiors, rather than as members of the community who have a wide and varied experience with life as it is actually lived. As one critic puts it, "Both judge and prosecutor tend to become bureaucratic, bookish, and authoritarian-minded.... In the judiciary as in other bureaucracies, conformity and industry offer the royal road to success."

The Germans may be able to select lay judges much more quickly than Americans, but there is also the possibility that lay judges with bias will wind up judging cases. A more serious objection to the lay judge system, however, is not that the lay judges have too much influence but that they have too little. In the vast majority of cases, lay judges follow the lead of their professional colleagues. One study shows that lay judges outvote professional judges in only 1.4% of all cases. (Compare this with an American study which shows that our juries arrive at a verdict that is different from that of the presiding judge in 22% of cases.)

No one disputes that German trials are brief, but critics point out that pretrial investigation is time-consuming and trials often occur months or even years after the incident.

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Therefore, they argue that there is not much overall saving in time. A nonadversarial system is probably less expensive for a defendant, but it might well be more expensive for the state, which has to pay for more judges and courtrooms. Reimbursing successful defendants for their legal costs would add more to the state's bills.

Though Americans are fed up with our criminal justice system, public opinion may not be ready to adopt a nonadversarial alternative. The continental system relies heavily on agency of government, such as the judiciary and the prosecutor's office, to deliver justice. Someone accused of a crime really can't do very much to protect himself. He must hope, rather, that the state's fact finding will reveal the truth and clear him.

Unripe for Change?

But a system that calls for more reliance on government and less on the individual is struggling against a strong tide of conservatism in this country. With more and more of our people becoming suspicious of government and "bloated" bureaucracy, the climate of opinion seems hardly ripe for adopting a system which presupposes a caring, efficient government and downplays the role of the individual.

Moreover, lawyers and judges on the Continent have long had a great respect for Anglo-American procedure, and credit it with serving as the model for many improvements in their system. Thanks in part to our Constitution and Bill of Rights, revolutionary zeal on the Continent led to many reforms in the 12th Century that did away with the practice of "trying" defendants strictly on the basis of their dossier, often in courts where they were not present or even represented by a lawyer. Among the procedures Europeans have borrowed from us are notice of charges, availability of defense counsel, lay participation in the trial process, and the principle that all evidence, even if it is already in the dossier, must be established at trial through testimony of witnesses.

Some German jurists are still dissatisfied with their system and look to ours as a source of reform. For example, German Appeals Court Judge Hans-Heinrich Jescheck notes that because judges do so much, lawyers often come to court unprepared. He adds that critics in Germany claim that the judge's predominance is "a relic from the time of the old inquisitorial trial" and question whether judges can truly be fair toward defendants.

Among Judge Jescheck's remedies are--surprise--"Germany should move toward an adversary process, because cross-examination appears to be a psychologically preferable method of extracting the truth, "and should follow our lead and break the trial into two parts, one to determine guilt and the other to impose sentence.

Maybe the grass is always greener on the other side of the fence. Perhaps the German system looks good because there have been relatively few studies of it, so that we assume that it really works like it's supposed to, contrasting it with the imperfections of our system, which we know all too well.

Where to Go From Here

Given the reality, of course, our country won't move quickly towards a nonadversarial system. Half a million lawyers in this country have been brought up in an adversarial system, and that system is deeply embedded in our common law heritage. But that doesn't mean that we can't adopt some aspects of the continental system, at least on a pilot basis. The continental system itself is a mixed one (an overlay of common law protections on the inquisitorial system), and there is no fundamental reason why our adversarial system cannot be enriched with some reforms from the Continent.

For example, as law professor Abraham Goldstein has suggested in the Stanford Law Review, American judges could become more active, commenting on the evidence, requiring witnesses to be summoned even when counsel did not call them, appointing experts, and even suggesting a defense to counsel.

Judges could take a more active role in overseeing police practices. In theory, judges are supposed to exercise this control by their power to grant or deny arrest and search warrants, but in practice most judges routinely accede to what the police ask for.

Judges also could be more active in putting limits on plea bargaining. They could refuse to accept pleas unless they were sure that the defendant had not been coerced and that the public interest had not been too casually bargained away by prosecutors. They could take a closer look at the facts underlying guilty pleas and the appropriateness of the charge and the proposed sentence.
Plea bargaining could be attacked in other ways as well. For example, American prosecutors have almost unlimited discretion to bring or to drop charges. Perhaps some of this discretion should be taken from them. There are other ways of relieving the overload. In Europe, for example, substantially fewer acts are declared punishable by law.

We might also experiment with lay judges. Vermont's county courts have been mixed tribunals for many years. In these courts, a professional judge is joined by two lay judges elected by the voters. This role for lay people dates back to concern that the circuit judge, representing state power, would impinge on the customs of local communities. Their position is guaranteed by the Vermont constitution. A variety of experiments in other states might come up with new ways of involving lay people without running into the delay and expense of lengthy jury selection.

These are but a few of the possible borrowings. Americans are becoming convinced that something has to be done about the criminal justice system, but it remains to be seen whether their concern will lead to fundamental changes in how justice is done. If reform does come, however, don't be surprised if it comes from this old rival of the adversary system.

Fighting Over the Adversary System

Recent interest in the continental system has sparked a lively debate on the virtue and defects of nonadversarial procedure. The best single book on the subject is John Langbein's Comparative Criminal Procedure: Germany (St. Paul, MN: West Publishing Company, 1977). This book is so well written that, though intended for law students, it can serve as a text for bright secondary school students. Langbein goes through the nonadversarial procedure carefully, contrasting

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it with ours at every point and using thought-provoking questions as the central teaching tool.

Sybille Bedford's The Faces of Justice: A Traveler's Report (New York: Simon and Schuster, 1966) could also serve as classroom material. It covers more than a dozen cases, in five European countries, all of them reported with a novelist's eye for telling detail and human emotion. Jerome Frank's Courts on Trial: Myth and Reality in American Justice (Princeton, NJ: Princeton University Press, 1950) is still the classic critique of the adversary system. See especially Chapter VI, "The 'Fight' Theory Versus the 'Truth' Theory."

Much of the debate over the nonadversarial system has been fought in the usually musty page of law journals. Favorable accounts of European procedure are found in John Langbein's "Land Without Plea Bargaining: How the Germans Do It" (Michigan Law Review, Vol. 78, No. 2, December 1979) and "Continental Criminal Procedure: 'Myth' and 'Reality'" (Yale Law Journal, Vol. 87, No. 8, July 1978).

Critiques of the European system can be found in Abraham Goldstein and Martin Marcus, "The Myth of Judicial Supervision in Three "Inquisitorial" Systems: France, Italy, and Germany" (Yale Law Journal, Vol. 87, No. 2, December 1977) and "Comment on Continental Criminal Procedure" (Yale Law Journal, Vol. 87, No. 8, July 1978). For the critique of a German jurist, see Hans-Heinrich Jescheck's "Principles of German Criminal Procedure in Comparison with American Law" (Virginia Law Review, Vol. 56, No. 2, March 1970).
For balanced accounts of the two systems, which suggest modest changes in American procedure, see Gerhard O. W. Mueller and Fre Le Poole-Griffiths, Comparative Criminal Procedure (New York, University Press, 1969); Jan Stepan, "Possible Lessons from Continental Procedure" in Simon Rottenberg (ed.) The Economics Crime and Punishment (Washington, DC: American Enterprise Institute for Public Policy Research, 1973), and Abraham Goldstein, "Reflections on Two Motels: Inquisitorial Themes in American Criminal Procedure" (Stanford Law Review, Vol. 26, No. 5, May 1974).

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HANDOUT #1

DISPUTE RESOLUTION

COMPARISON	NEGOTIATION	MEDIATION	ARBITRATION	ADJUDICATION
PARTIES' INVOLVEMENT	BOTH PARTIES AGREE TO PARTICIPATE	AGREEMENT OR CONTRACT	BOTH PARTIES AGREE TO ENTER INTO PROCESS	VOLUNTARY BY PLAINTIFF; INVOLUNTARY BY DEFENDANT.
TYPE OF PROCESS	INFORMAL AND UNSTRUCTURED; EACH SIDE MAY HAVE SOMEONE TO REPRESENT THEIR INTERESTS.	INFORMAL & INVOLVES A THIRD PARTY; PROBLEM-SOLVING APPROACH. PRIVATE PROCEEDING	FORMAL BUT LESS STRUCTURE THAN TRIAL. ADVERSARIAL. PRIVATE.	FORMAL & RIGID WITH RULES OF EVIDENCE. ADVERSARIAL. PUBLIC PROCESS. MATTER OF RECORD
ROLE OF THIRD PARTY	DON'T HAVE	MEDIATOR IS FACILATATOR-SUGGESTS POSSIBLE COMMON AREAS OF POSSIBLE AGREEMENT.	ARBITRATOR HEARS BOTH SIDES, AND MAKES A DECISION - MAY BE BINDING ON BOTH SIDES	JUDGE OR JURY IS FACT FINDER AND DECISION-MAKER.
END RESULT	SETTLEMENT REFLECTS COMPROMISE ON BOTH SIDES; IF NO AGREEMENT CAN BE REACHED THROUGH THIS PROCEDURE, MOVE TO MEDIATION OR ARBITRATION, OR ADJUDICATION	MUTUALLY ACCEPTABLE AGREEMENT & IT BECOMES PART OF THE CONTRACT.	THIRD PARTY DECISION IS MOST OFTEN BINDING ON BOTH PARTIES, AND MIGHT BE CHALLENGED IN COURT; MAY BE A COMPROMISE, BUT NOT ALWAYS	WIN/LOSE. BINDING, BUT CAN BE APPEALED.

[HANDOUT #2, OPTION #1]	THE ADVERSARY VS. THE NON-ADVERSARY SYSTEM OF JUSTICE	
AREA OF COMPARISON	**ADVERSARY SYSTEM**	**NON-ADVERSARY SYSTEM**
1. FACT FINDING. A. BY WHOM B. WHEN	(A) (B)	(A) (B)
2. JUDGES A. HOW CHOSEN B. FUNCTION C. BACKGROUND	(A) FEDERAL LEVEL: 1. STATE LEVEL: 1. (B) (C)	(A) (B) (C)
3. PROSECUTORS' & DEFENSE ATTORNEYS' ROLES	(A) (B) (C)	(A) (B) (C)
4. ROLE OF LAY PEOPLE (A) HOW CHOSEN (B) ROLE (C) PROCEDURES	(A) (B) (C)	(A) (B) (C)
5. PLEA BARGAINING	(A)	(A)
6. SPEEDY TRIALS (A) BEFORE TRIAL (B) TRIAL ITSELF	(A) (B)	(A) (B)
7. COSTS: (A) FOR ATTORNEYS (B) FOR TRIAL	(A) (B)	(A) (B)

[HANDOUT #2, OPTION #2] THE ADVERSARY VS. THE NON-ADVERSARY SYSTEM OF JUSTICE		
AREA OF COMPARISON	**ADVERSARY SYSTEM**	**NON-ADVERSARY SYSTEM**
1. FACT FINDING. A. BY WHOM B. WHEN	(A) (B)	(A) BY A THOROUGH INVESTIGATION BY THE JUDGE AND PROSECUTOR WHO MUST MAKE AN INDEPENDENT STUDY EVEN WHEN THE DEFENDANT PLEADS GUILTY. (B) BEFORE THE CASE COMES TO TRIAL.
2. JUDGES A. HOW CHOSEN B. FUNCTION C. BACKGROUND	(A) FEDERAL LEVEL: 1. STATE LEVEL: 1. (B) (C)	(A) AFTER UNIVERSITY LEGAL TRAINING, THEY CHOOSE A JUDICIAL CAREER AND AFTER FINISHING A 2 YR. APPRENTICESHIP, YOU ARE APPOINTED BY THE MINISTRY OF JUSTICE (TOP OF THE CLASS) 3-4 YR. PROBATIONARY PERIOD - PROMOTED TO LIFE TENURE. (B) THEY CONDUCT THEIR OWN INQUIRES & CONDUCT QUESTIONING UNTIL THEY FEEL JUSTICE IS DONE. (C) PROFESSIONAL CAREER JUDGES TRAINED FOR JUDICIAL ROLE
3. PROSECUTORS' & DEFENSE ATTORNEYS' ROLES	(A) (B) (C)	(A) CAREER PROFESSIONALS - EXPECTED TO REMAIN FOR LIFE. (B) LAW SCHOOL TRAINING (C) BOTH PROSECUTION AND DEFENSE ASK SUPPLEMENTARY QUESTIONS TO THOSE OF THE JUDGE.
4. ROLE OF LAY PEOPLE (A) HOW CHOSEN (B) ROLE (C) PROCEDURES	(A) (B) (C)	(A) LAY JUDGES WHO SIT WITH PROFESSIONAL JUDGES, LAY JUDGES ARE IN THE MAJORITY (B) LAWYERS MUST ACCEPT WHATEVER LAY JUDGES ARE ASSIGNED RANDOMLY TO THE CASE. (C) CAN ASK QUESTIONS, AND DELIBERATE UNDER THE DIRECTION OF THE PROFESSIONAL JUDGE. VERDICT - UNANIMOUS VOTE OF LAY JUDGES.
5. PLEA BARGAINING	(A)	(A) NONE. NO INDUCEMENTS TO PLEA-BARGAIN SINCE ALL CASES GO TO TRIAL, EVEN IF DEFENDANT PLEADS GUILTY.
6. SPEEDY TRIALS (A) BEFORE TRIAL (B) TRIAL ITSELF	(A) (B)	(A) PRE-TRIAL: MONTHS & SOMETIMES YEARS (B) TRIALS - ABOUT 2 HRS. (ANNOUNCED DECISIONS TAKE LONGER – LENGTHY OPINIONS/JUDGE.)
7. COSTS: (A) FOR ATTORNEYS (B) FOR TRIAL	(A) (B)	(A) DEFENDANT PAYS FOR ATTORNEY, BUT IF THE STATE LOSES, IT PAYS DEFENSE COSTS. (B) TRIALS ARE SHORTER. ROLE OF LAWYERS LESS SO COST IS LESS. IF DEFENDANT LOSES HE/SHE PAYS COST OF PROSECUTION.

THE ADVERSARY VS. THE NON-ADVERSARY SYSTEM OF JUSTICE		
AREA OF COMPARISON	ADVERSARY SYSTEM	NON-ADVERSARY SYSTEM
1. FACT FINDING. A. BY WHOM B. WHEN	(A) BY VIGOROUS DIRECT AND CROSS-EXAMINATION BY PROSECUTOR AND DEFENSE ATTORNEY. (B) IN FRONT OF AN IMPARTIAL JURY OR JUDGE.	(A) BY A THOROUGH INVESTIGATION BY THE JUDGE AND PROSECUTOR WHO MUST MAKE AN INDEPENDENT STUDY EVEN WHEN THE DEFENDANT PLEADS GUILTY. (B) BEFORE THE CASE COMES TO TRIAL.
2. JUDGES A. HOW CHOSEN B. FUNCTION C. BACKGROUND	(A) FEDERAL LEVEL: 1. PRESIDENTIAL APPOINTMENT FOR LIFE STATE LEVEL: 1. ELECTION OR APPOINTMENT OR COMBINATION OF ELECTION OR APPOINTMENT. (B) PRESIDE AND DECIDE QUESTIONS OF LAW-KEEP ORDER. (C) COME FROM PRIVATE PRACTICE, WHERE THEY HAVE BEEN EITHER PROSECUTORS OR DEFENSE COUNSEL.	(A) AFTER UNIVERSITY LEGAL TRAINING, THEY CHOOSE A JUDICIAL CAREER AND AFTER FINISHING A 2 YR. APPRENTICESHIP, YOU ARE APPOINTED BY THE MINISTRY OF JUSTICE (TOP OF THE CLASS) 3-4 YR. PROBATIONARY PERIOD - PROMOTED TO LIFE TENURE. (B) THEY CONDUCT THEIR OWN INQUIRES & CONDUCT QUESTIONING UNTIL THEY FEEL JUSTICE IS DONE. (C) PROFESSIONAL CAREER JUDGES TRAINED FOR JUDICIAL ROLE
3. PROSECUTORS' & DEFENSE ATTORNEYS' ROLES	(A) USUALLY ELECTED AFTER THEY HAVE A CAREER IN PRIVATE PRACTICE. (B) PRIVATE PRACTICE AFTER GRADUATION FROM LAW SCHOOL. (C) CONDUCT VIGOROUS DIRECT AND CROSS-EXAM, AND ARE THE MAIN QUESTIONERS.	(A) CAREER PROFESSIONALS - EXPECTED TO REMAIN FOR LIFE. (B) LAW SCHOOL TRAINING (C) BOTH PROSECUTION AND DEFENSE ASK SUPPLEMENTARY QUESTIONS TO THOSE OF THE JUDGE.
4. ROLE OF LAY PEOPLE (A) HOW CHOSEN (B) ROLE (C) PROCEDURES	(A) JURORS, CHOSEN AT RANDOM (B) MUST SUBMIT TO VOIR DIRE BY ATTORNEYS, AND BE ACCEPTED BY BOTH SIDES. (C) DECIDES QUESTIONS OF FACT, AND DECIDES GUILT OR INNOCENCE. REACH VERDICT BY UNANIMOUS VOTE OF THE 12 JURORS.	(A) LAY JUDGES WHO SIT WITH PROFESSIONAL JUDGES, LAY JUDGES ARE IN THE MAJORITY (B) LAWYERS MUST ACCEPT WHATEVER LAY JUDGES ARE ASSIGNED RANDOMLY TO THE CASE. (C) CAN ASK QUESTIONS, AND DELIBERATE UNDER THE DIRECTION OF THE PROFESSIONAL JUDGE. VERDICT - UNANIMOUS VOTE OF LAY JUDGES.
5. PLEA BARGAINING	(A) USED TO SETTLE 85-90% OF CRIMINAL CASES.	(A) NONE. NO INDUCEMENTS TO PLEA-BARGAIN SINCE ALL CASES GO TO TRIAL, EVEN IF DEFENDANT PLEADS GUILTY.
6. SPEEDY TRIALS (A) BEFORE TRIAL (B) TRIAL ITSELF	(A) CAN RANGE FROM 4 MONTHS TO 1 1/2 YEARS. (B) TRIALS CAN TAKE DAYS, WEEKS, MONTHS.	(A) PRE-TRIAL: MONTHS & SOMETIMES YEARS (B) TRIALS - ABOUT 2 HRS. (ANNOUNCED DECISIONS TAKE LONGER – LENGTHY OPINIONS/JUDGE.)
7. COSTS: (A) FOR ATTORNEYS (B) FOR TRIAL	(A) RIGHT TO COUNSEL, IF TOO POOR. RIGHT TO COURT-APPOINTED ATTORNEY. (B) EXPENSIVE. LAWYERS FEES MUST BE PAID BY INDIVIDUAL EVEN IF YOU WIN YOUR CASE	(A) DEFENDANT PAYS FOR ATTORNEY, BUT IF THE STATE LOSES, IT PAYS DEFENSE COSTS. (B) TRIALS ARE SHORTER. ROLE OF LAWYERS LESS SO COST IS LESS. IF DEFENDANT LOSES HE/SHE PAYS COST OF PROSECUTION.

COMPARISON WORKSHEET

Key:

1. Fact finding
2. Judges
3. Prosecutor/defense counsel
4. Role of lay people
5. Plea bargaining
6. Speedy trials
7. Costs

AREA	ADVERSARY	NON-ADVERSARY
1	ADVANTAGE ---- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
2	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
3	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
4	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
5	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
6	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*
7	ADVANTAGE ----- DISADVANTAGE *explain:*	ADVANTAGE -----DISADVANTAGE *explain:*

Assignment: After completing this chart, decide what features you would like your legal system to have. You may combine the best of both systems to create an efficient, fair, and just method of handling criminal behavior. You may add any features not mentioned on this chart.

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